TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1149.

THE EVANSVILLE NATIONAL BANK OF EVANSVILLE, INDIANA, APPELLANT,

vs.

THOMAS P. BRITTON, TREASURER OF VANDERBURGH COUNTY.

FILED NOVEMBER 15, 1881.

No. 1156.

THOMAS P. BRITTON, TREASURER OF VADDERBURGH COUNTY, APPELLANT,

vs.

THE EVANSVILLE NATIONAL BANK OF EVANSVILLE, INDIANA.

FILED NOVEMBER 21, 1881.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

SUPREME COURT OF THE UNITED STATES.

No. 1149.

THE EVANSVILLE NATIONAL BANK OF EVANSVILLE, INDIANA, APPELLANT,

vs.

THOMAS P. BRITTON, TREASURER OF VANDERBURGH COUNTY.

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THE EVANSVILLE NATIONAL BANK OF EVANSVILLE, INDIANA.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Demurrer overruled	14	7
Demurrer	14	7
Answer	16	8
Replication	24	13
Temporary injunction awarded	25	13
COMPLAINANT'S EVIDENCE.		
Testimony of Samuel Bayard	28	14
F. A. Preston	37	20
J. D. Preston	38	20
D. J. Mackey	39	21
Exhibit A. (Tax duplicate, Vanderburgh County)	43	23
B. (Tax statement of Woollen, Webb, & Co.)	44	25

	Original.	Pri
Exhibit C. (Tax statement of S. A. Fletcher & Co.)	46	
D. (Tax statement of Fletcher & Sharpe.)	47	
E. (Tax statement of Indiana Banking Co.)	48	
F. (Tax statement of Central Bank.)	49	
G. (Tax statement of A. & John C. I. Harrison	50	
H. (Tax duplicate of Warren County.)	51	

DEFENDANT'S EVIDENCE.

Testimony of William Warren	54	
A. A. Swope	62	
S. G. Evans	64	

COMPLAINANT'S EVIDENCE IN REBUTTAL.

Deposition of S. P. Gillett	66	
Final decree	68	
Appeal by complainant and defendant	70	
Supplemental bill	71	
Stipulation of counsel	74	
Clerk's certificate	75	

Print.
26
28
29
30
32
33
37
42
43
44
46
46
47
48
48

1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house in the city of Indianapolis, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and eighty-one, before the honorable Thomas Drummond, judge of said circuit court.

THE EVANSVILLE NATIONAL BANK OF EVANSville, Indiana,
v.
THOMAS P. BRITTON, TREASURER OF VANDERburgh County. } No. 7320. Chancery.

Be it remembered that heretofore, to wit, at the May term of said court, on the 25th day of October, 1881, before the honorable Thomas Drummond, judge of said court, the following proceedings in the above entitled cause, were had, to wit:

Comes now Noble C. Butler, clerk of said court, and files the transcript of the proceedings had herein at Evansville in said cause, together with all papers, pleadings, and testimony filed.

And said transcript is in the words following:

Pleas in the circuit court of the United States for the district of Indiana, at Evansville, begun and holden at the United States
2 court-rooms, at the city of Evansville, said district, on the first Monday in April, in the year of our Lord one thousand eight hundred and eighty, before the honorable Walter Q. Gresham, judge of the district court of the United States for the district of Indiana, and ex-officio one of the judges of said circuit court.

THE EVANSVILLE NATIONAL BANK OF EVANSville, Indiana,
vs.
THOMAS P. BRITTON, TREASURER OF VANDERburgh County. } No. 308. Chancery.

Be it remembered that heretofore, to wit, on the 3d April, A. D. 1880, there was filed in the office of the clerk of said court, a bill of complaint in the words and figures following, to wit:

THE EVANSVILLE NATIONAL BANK OF EVANSville, Indiana,
vs.
THOMAS P. BRITTON, TREASURER VANDERburgh County.

To the honorable the judges of the circuit court of the United States for the district of Indiana, in chancery sitting:

The Evansville National Bank, of Evansville, Indiana, brings this its bill of complaint against Thomas P. Britton, a citizen and resident of the city of Evansville, county of Vanderburg, and State of Indiana, who is the treasurer of said county, and, as such, charged with the collection of the State and county revenue levied and assessed in said county for the year 1879, and, humbly complaining, showeth unto your honors:

That your orator is a banking association and corporation organ-

ized in January, 1865, under the act entitled, "An act to provide
3 a national currency, secured by United States bonds, and to provide for the circulation and redemption thereof," approved June 4, 1864. That under said organization your orator has been located, and has continuously done business as a banking corporation, in the said city and county ever since, having all the time, for three years last past, a capital stock of eight hundred thousand dollars, divided into eight thousand (8,000) shares, which are severally owned and held by sundry stockholders resident in said city of Evansville, in the city of New York, and elsewhere, in number about eighty-five. That by an act of the legislature of the State of Indiana, passed in 1872, which is still in force, it is provided in substance that the shares of capital stock of any national bank organized under the laws of the United States shall be assessed to the owner thereof in the county, township, city, or town in which such bank or banking association is located, and shall be taxed for State, county, and township purposes at the same rate as other personal property in the same locality is taxed; and the assessment is required by the said act of the legislature, which is still the law in said State, to be for the full and fair cash value of the capital stock of such banks on the 1st of April, without deduction. And your orator would further show unto your honors that by the same law of the State, so in force as aforesaid, the real and tangible personal property of all said banks, embracing your orator's, whose real estate is worth twenty-eight thousand dollars, is also taxed for its cash value. That by the provisions of said State law so in force no deduction from the actual cash value of said shares can be made for the value of said real property, which represents part of the value of said shares and said capital stock so separately taxed. And your orator further
4 shows to your honors that by the provisions of said State statute, still in force, the moneyed capital of individual citizens of said State is exempt from assessment and taxation in all cases where the same is invested in the shares of capital stock, or the capital stock of any corporation, association or company created under the laws of said State, the tangible property of which is assessed for taxation; and this embraces the shares and capital stock of all the corporations in said State, except banking corporations organized under the general banking law of the State (of which there are none in existence in the State), except as hereinafter stated. And so your orator says that, by the provisions of said State statute, there is a discrimination against moneyed capital invested in national-bank shares, and the shares of railway companies, gas companies, insurance companies, and all other foreign and domestic corporations in which are millions of dollars of the capital of the other citizens of the State invested, in this, to wit: That, under said State law, the shares and capital stock of national banks are subjected to assessment and taxation for their full and fair cash value, on the 1st day of April of each year, without deduction as aforesaid, and their tangible property, real and personal, is subject to the like assessment and taxation, thereby imposing a double tax upon the value of shares and capital stock represented by the value of said real estate; whereas, the said moneyed capital so invested in said shares of said companies, organized under the laws of the State, are exempted from any such double taxation, in all cases, by the provisions aforesaid, whereby the shares are exempted from taxation where their property is taxed.

And your orator would further show unto your honors that, by
5 the provisions of the same State statute, now and for eight years last past in force, all citizens of the State are required to list and

have assessed for taxation, at their cash value, all credits or money at interest within or without the State, as well as all other demands against persons or bodies corporate either within or without the State. But, from the aggregate of such credits, such citizens are, by said law, allowed to deduct the bona fide indebtedness of such citizens, and the taxes for State and county purposes in each county are levied upon the remainder of the value of said credits and money at interest, after the deduction of said indebtedness; and your orator states it to be true, according to information and belief, that millions of dollars of the moneyed capital of the citizens of the States, and every county thereof, sums larger than all the banking capital therein, are invested in such credits, demands, and moneys at interest in all parts of the State, and in every county, and especially in the county of Vanderburgh, and that a large number of the holders of such credits, moneys at interest, and demands are largely indebted, and thereby obtain exemption from large sums in taxes in the States, and in said county, whereby the holders of shares of your orator's capital stock, and all the banks in the State of Indiana, organized under said act of Congress, are compelled to pay a larger tax upon their shares, in proportion to the value thereof, than do the citizens of said county and said State whose moneyed capital is invested in such credits, demands, and money at interest.

And your orator further shows that sundry of its shareholders, who are compelled to pay taxes upon their shares assessed at their full cash valuation, without any deduction for the value of real estate doubly taxed, are indebted respectively in large sums of money, but are not not permitted, by said unjust and unequal and discriminating
6 statute, nor by the officers enforcing the same, to deduct the same from the value of said shares, as are those citizens whose moneyed capital is invested in such credits, demands, and money at interest.

And your orator further shows to your honors that, on the 1st day of April, 1879, a large amount, to wit, eight hundred and twelve thousand dollars ($812,000) of the means of your orator, which are represented by the shares of stock held by your orator's shareholders, were invested in United States bonds, held by the Comptroller of the Currency for security for circulation and deposits, together with fifty thousand ($50,000) dollars of like bonds held as assets of your orator, and sixty-four thousand ($64,000) dollars legal-tender notes, making in all nine hundred and twenty-six thousand ($926,000) dollars, which are, by the Constitution and laws of the United States and said State statute, exempted from taxation. And if said bonds and legal tenders so exempt were withdrawn from the assets of your orator, its shares would not be worth exceeding twenty dollars each; whereas, with the sum so invested and exempt from taxation, they are worth their par value in cash. But said State statute makes no provision whatever for the deduction from the taxable value of said share, or any of the shares of national banks, situate in the State, for any sum so invested in such bonds or legal-tenders. That, by reason of the failure of said statute to make provision for such deductions, the shares of your orator are taxed at a greater rate than moneyed capital of citizens or corporations other than national banks of said State, to wit, capital invested in the stock of all other corporations in said State, and especially the stock or shares of State banks organized in said State under the laws thereof,
whose capital stock or shares is taxed by the provisions of said
7 State statute, after deducting the amount invested in government bonds and legal-tender notes, and the indebtedness of said corporations and banks, except national banks, who can have no such de-

ductions, and also money invested in banking, in brokerage, of which there is a large amount invested by private individuals, and which is only taxed after deducting debts, United States bonds, and legal-tender notes, as aforesaid.

And so your orator shows to your honors that, by the manner of assessment and taxation pointed out by said statute, the shares of capital stock of your orator's, and of all the national banks within said State, are valued higher in proportion to their real value than other moneyed capital of other citizens or corporations in this, to wit: First, That the shares must be appraised at their full cash value, and their tangible property, real and personal, is appraised separately, and the amount thereof cannot lawfully be deducted from the value of said shares; whereas, the shares or stock of all corporations whose property is taxed, other than national banks, are exempt to the extent of the value of the tangible property of such corporations, assessed for taxation.

Second. The shares of said national banks, including your orator's, are taxed at their fair cash value, payable directly or indirectly by the shareholder, who, under the law, is not permitted to deduct his indebtedness from such value, although many of your orator's shareholders, and those of the other associations of this county are, and have been, for more than one year last past, largely indebted, and had no taxable credits from which said debts might be deducted, whereby the said shareholders are and have been compelled to pay taxes upon their shares, notwithstanding said debts; while the citizens having
8 moneyed capital invested in taxable credits, money at interest, or demands on persons or corporations, are permitted to deduct their debts from the value thereof, and required to pay taxes upon the net balance.

Third. The holders of said shares of national banks, including your orator's, are required by said State statute to pay a rate of taxation upon the actual cash value of their shares of capital stock, and no provision is made for the deduction from said valuation of anything for the value of their said United States bonds or legal-tender notes, which are exempt from taxation, and which represent more than eighty per cent. of the value of said shares; whereas the moneyed capital of other citizens and corporations other than national banks, invested in said bonds or legal-tender notes, or both, is by said State law and the Federal Constitution and laws, exempt from taxation to the value of said bonds.

Wherefore, your orator avers and charges the said State statute is in conflict with the act of Congress, and is null and void.

But your orator further shows unto your honors that, notwithstanding the invalidity of said provisions of said statute of said State, the county auditor of Vanderburgh County, under the provisions of said State statute, on or near the 1st day of May, 1879, furnished to your orator's cashier a blank report, and made demand that the same should be filled, signed, sworn to, and delivered to the said auditor, whose duty it was and is, under said statute, to receive the same and to file the same in his office; which said report was so filled up, sworn to, and filed, and in accordance with the printed blank so furnished, contained the names and residences of all the shareholders of your orator, the number of shares held by each, the par value thereof, and the estimated cash value, and by which it appears that
9 the whole par value of your orator's shares is eight hundred thousand ($800,000) dollars, and one hundred ($100) dollars per share, and the estimated fair cash value thereof was, on the first day of

April, 1879, eight hundred thousand ($800,000) dollars, and one hundred dollars per share. That, although the fair cash value of all your orator's shares, in the aggregate, was, on said 1st day of April, 1879, not more than eight hundred thousand dollars ($800,000), yet upon the meeting of the board of equalization of said county, under the provisions of said statute, the shares were appraised and assessed by said board in the aggregate, and illegally directly charged to your orator at eight hundred and eleven thousand four hundred and fifty ($811,450) dollars for the whole, thereby unlawfully raising said valuation above the sum reported by your orator as aforesaid, by the sum of $1.43-8 per share. And by the direction of said board of equalization, the auditor, whose duty it is to place property upon the proper assessment roll and tax duplicate, wrongfully and unlawfully placed said valuation and assessment to your orator upon the assessment roll and tax duplicate for taxation, as the personal property of your orator, at said valuation, to wit: said aggregate sum of eight hundred and eleven thousand five hundred and fifty ($811,550) dollars, the same being placed upon said roll and duplicate in the column marked personal property, thereby pretending to comply with said statute. And thereupon, said auditor, as was his duty, placed upon the said duplicate and roll, in the proper columns for real estate, the description and value of your orator's real estate, appraised at twenty-eight thousand four hundred and fifty ($28,450) dollars, and thereupon added thereto said valuation of said shares, and extended on said duplicate said valuation of said
10 shares, the whole sum being extended in the total column as eight hundred and forty thousand ($840,000) dollars.

And thereupon the board of commissioners having made the proper levy of State, county, school, township and road tax, upon all the real and personal property in said city and county, at one dollar and twenty-two cents ($1.22) per hundred, the auditor computed, extended, and charged to your orator said aggregate per cent. upon said real and personal property, so as aforesaid assessed to the sum of ten thousand two hundred and forty-eight ($10,248) dollars, whereby, under the provisions of said statute, said shareholders became and were and are indirectly charged with said taxes in the proportion of one dollar and twenty-three and three-fourth cents (1.23¾) cents per share, and in the aggregate sum of nine thousand nine hundred dollars and ninety one cents ($9,900.91), as and for the tax thus assessed, levied, and charged upon such shares of your orator's capital stock. And your orator became, and was, and is, duly and properly charged upon said duplicate for said real estate of your orator, three hundred and forty-seven dollars and nine cents ($347.09), which they offered to pay, and did pay, as hereinafter stated.

And your orator would further show unto your honors that immediately upon the assessment and levy of said taxes, and the entry and assessment thereof upon the said assessment roll and duplicate, and the computation of said taxes, and the extension and addition thereof, and charging the same to your orator and said shareholders, as aforesaid, and after the assessing, listing and entering for taxation all the taxable property in said county, and levying, entering, charging and computing
the taxes thereon, and having completed said duplicate in con-
11 formity to the said statute of said State, said auditor, in due time, delivered the same over to the defendant Thomas P. Britton, then and now the treasurer of said county, whereby he became and was and is authorized to collect, from the persons chargeable therewith, all the taxes which are duly and legally assessed and entered and

placed upon said duplicate for said year. That such taxes are due and payable before the third Monday in April, 1880, and, if not paid by that time, are subject to a penalty of ten per cent. That, by the provisions of said State statute, the taxes so levied and assessed upon the shares of your orator's capital stock are payable by the owners or holders of such shares.

But your orator says that, for the better security of the payment of said taxes, the same are, by said statute, made a lien upon such shares, and such lien relates back to the 1st of April, 1872, and takes precedence of all transfers of such shares and remains a lien thereon until such taxes are paid. And it is made the duty of your orator and the officers thereof, by State statute, to retain so much of any dividend belonging to such stockholders as shall be necessary to pay said taxes until the same shall have been paid.

And your orator would further show unto your honors that, claiming that said assessment, levy, entry, charge, computation, and extension of said taxes against your orator and its said shareholders are legal, said defendant is threatening to collect from said shareholders, or from your orator, the whole of said ten thousand two hundred and forty-eight ($10,248) dollars of taxes, and, if not restrained, will proceed to collect the same by distress and sale of the property of said shareholders, or of the property of your orator, for the satisfaction thereof. And your
12 orator, recognizing that the sum of three hundred and forty-seven dollars and nine cents ($347.09) so assessed and charged against its real estate is just, did, before the commencement of this suit, offer and tender the same to the defendant, said Thomas P. Britton, treasurer as aforesaid, and which was received by him. But your orator avers and charges that, for the reasons already set forth, the sum of nine thousand nine hundred dollars and ninety-one cents ($9,900.91) taxes, so charged against your orator, and thereby indirectly against said shareholders, is illegal.

And your orator further avers and charges that, inasmuch as said taxes are made a lien upon said shares by said statute, and your orator is forbidden to pay out dividends, or to permit the transfer of the stock free from said lien, it has become indispensable, and has therefore become a usage as between your orator and said shareholders for your orator to pay the taxes charged against said shares, and deduct the same from the dividends accruing to said shareholders. But being confident that the whole of said taxes so assessed upon said shares are illegal, a large number of said shareholders have refused to pay said taxes or to permit your orator to pay them, and have notified your orator that the said tax is illegal and oppressive, and that they do not intend to regard said law or pay said taxes, and they forbid your orator to pay and deduct the same from any dividend upon said shares or other funds belonging to said shareholders. And your orator further avers that by reason of the premises, your orator will suffer a multiplicity of suits from said shareholders for its refusal to pay said dividends, or to transfer said shares, and will thereby be mulcted in excessive costs and damages, and will suffer, in its credit and business, irreparable injury; and moreover, that said illegal and oppressive
mode of assessment and levy of taxes of the shares of your
13 orator's bank, and the shares of other banking institutions, have already damaged the property and business of your orator in a large sum, to wit, in a sum exceeding ten thousand dollars ($10,000).

That unless such methods of valuation, and the State law under which they are made, are declared illegal by this court, and said State,

county, and township authorities shall be restrained from their attempt to enforce said law, or to collect State, county, and other taxes until the legislature shall conform its legislation to the acts of Congress, by virtue of which alone the State authorities have power to tax said shares, your orator will annually be subjected to a multiplicity of suits, as above set forth; and will have funds in its possession, arising from its dividends, or otherwise belonging to its shareholders, distrained upon and seized by the said defendant, said county treasurer, and the credit and business of your orator will be thereby injured, if not ruined.

To the end, therefore, that the defendant, Thomas P. Britton, may, if he can, show cause why the relief herein sought should not be granted, your orator prays that the United States' most gracious writ of subpœna may issue against him, commanding him, at a time and place therein mentioned, to appear before this honorable court, and then and there full, true, and complete answers make, without oath, to all the matters and things herein charged; that until the final hearing the defendant may be enjoined from the collection of said illegal taxes, and that, upon the final hearing, said State statute, and all the provisions thereof, touching or affecting the taxation of your orator's shares, may be declared illegal and void; that the defendant may be perpetually enjoined from the collection of said taxes, and that your orator may have
14 all such other and further relief as to your honor may seem meet, and your orator will ever pray, etc.

GILCHRIST & BUTTERFIELD,
A. & J. E. IGLEHART,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
District of Indiana, ss:

Samuel Bayard swears that he is president of said Evansville National Bank, and has been for more than three years last past; that the matters and things set forth in the foregoing bill of complaint as true are true, and the matters and things set forth upon information and belief are true according to the best of his knowledge, information, and belief.

SAM. BAYARD.

Subscribed and sworn to before me this 2d day of April, 1880.
JOHN LENIHAN, JR.,
Notary Public.

Amended bill sworn to before me this 18th day of May, 1880.
JOHN LENIHAN, JR.,
Notary Public.

And afterwards, to wit, Tuesday, August 10th, A. D. 1880, the following further proceedings in said cause were had, to wit:

Come now the parties by their respective solicitors, and the defendant having heretofore filed his demurrer to the bill of complaint, and the court having heard the argument of counsel thereon, and being fully advised what judgment to give, now here overrules said demurrer, and leave is now here granted to the defendant to file his answer to said bill on or before the 19th day of August, A. D. 1880.

And said demurrer is in the words following, to wit:

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as are therein and thereby set forth and al-

ledges, demurs thereto, and for cause of demurrer showeth that the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any relief from or against this defendant touching the matters contained in said bill or any such matters.

15 Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to the said bill of complaint, and all matters and things therein contained, and humbly prayeth judgment of this honorable court whether he shall be compelled to make any further answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of Thomas P. Britton, defendant, to the bill of complaint of the Evansville National Bank, complainant, is well founded in law, and proper to be filed in the above cases.

H. A. MATTISON AND
BUCHANAN, GOODING & BUCHANAN,
Solicitors and of Counsel for Defendant.

UNITED STATES OF AMERICA,
District of Indiana:

Thomas P. Britton, being duly sworn, does depose and say, that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

THOMAS P. BRITTON.

NOBLE C. BUTLER, *Clerk.*
Per J. W. WARTMANN, *Deputy.*

And afterwards, to wit, on Thursday, the 19th day of August, A. D. 1880, the following further proceedings in said cause were had, to wit:

Comes this day the defendant herein, by Messrs. Mattison, Buchanan, Gooding and Buchanan, his solicitors, and files his answer herein in the words and figures following, to wit:

16 The answer of Thomas P. Britton, defendant, to the bill of complaint of the Evansville National Bank of Evansville, Indiana, complainant.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised are material or necessary for him to make answer unto: The defendant answering, saith that he hath been informed and believes it to be true that the complainant is a banking association and company organized in January, 1865, under the act entitled "An act to provide a national currency, secured by United States bonds, and to provide for the circulation and redemption thereof," approved January 4th, 1864. And that under said organization said complainant's bank has been located and continually done business as a banking corporation in said city and county, having all the time a capital stock of eight hundred thousand dollars, and divided into eight thousand shares, which shares are severally owned and held by sundry stockholders residing in said city of Evansville and elsewhere, in number about eighty-five. That this defendant admits that by the law of the State of Indiana now and for

eight years last past in force, it is provided, in substance, that the shares of capital stock of any national bank organized under the laws of the United States shall be assessed to the owner thereof in the county, township, city, or town in which such bank or banking association is located, and shall be taxed for State, county, and township purposes at the same rate as other personal property in the same locality is taxed, and that the assessment is required to be made for the fair cash value of said shares of capital stock on the 1st day of April of each year.

And this defendant further answering says that he denies that the real and tangible personal property of all national banks located in the State of Indiana are by law of said State of Indiana taxed for their full cash value, and that no deduction from the actual cash value of such shares can be made for the value of such real and tangible property.

This defendant further answering says that it is not true, in manner and form as stated in complainant's bill of complaint, "that by the provisions of said State statute still in force, the moneyed capital of individual citizens of said State is exempt from assessment and taxation in all cases where the same is invested in the shares of capital stock or the capital stock of any corporation, association, or company created under the law of said State, the tangible property of which is assessed for taxation, and this embraces the shares in capital stock of all the corporations in said State except banking corporations organized under the general banking law of said State. But this defendant says that by the provisions of the law of said State the
17 tangible property, real and personal, of all said corporations, associations, and companies organized under the laws of said State are assessed and valued at their fair cash value for taxation, and that the capital stock, including the franchise over and above the value of the tangible property, is assessed and valued at its fair cash value for taxation; and the value of the tangible property, real and personal, and the value of the capital stock, including the franchise, over and above the value of said tangible property, are added together, and this aggregate valuation is the basis upon which the tax is levied on all said corporations, associations, and companies organized under the laws of said State, except banking corporations organized under the general banking law of said State. That by the provision of said State statute, in order to prevent double taxation against said corporations, associations, and companies organized under the laws of said State, other than banking corporations, it is provided by the law of said State that in all cases where the tangible property, or the capital stock of any such company or association, is assessed under the laws of said State, the shares of capital stock of any such company or association shall not be assessed or taxed in said State.

This defendant denies that there is any discrimination against moneyed capital invested in national bank shares, or that the shares of national banks are subject to a double taxation by the laws of said State; but, on the contrary, this defendant says, by the laws of said State, shares of national bank stock are required by said State law to be assessed and valued at their fair cash value for taxation; and that in truth and in fact the shares of national bank stock of complainant's bank were assessed and valued at $105 on each share of $100 for the year 1879, and that at the time the said shares were so assessed
18 they were of the value of $125 for each share of $100, and were assessed below their fair cash value. That 8,000 shares of $100

each were assessed at $840,000, and that this assessment and valuation included all the real and personal property of said bank. That the auditor of said county, in placing the same on the tax duplicate, placed the real estate of the complainant on said tax duplicate at $28,450, and personal property at $811,550, making the value of the shares $105 for each share of $100, and the aggregate value thereof $840,000.

The defendant, for further answer to the complaint of the plaintiff, says that it is true, as he is informed and he believes, that every citizen is required by the law of said State to list and have assessed for taxation at their cash value all credits or money at interest within or without the State, as well as all other demands against persons or bodies corporate within and without the State; but this defendant denies that by the law of said State that from the aggregate of such credits said citizen is allowed to deduct the bona fide indebtedness of said citizen, and the taxes for State and county purposes in each county are levied on the remainder, but on the contrary this defendant avers that by the law of said State no person, corporation, or company is entitled to any deduction from the amount of any bonds, stock, or money loaned, but such deduction can only be made from demands against persons or bodies corporate, and that by the law of said State the citizen is only allowed to deduct from demands against persons or bodies corporate such bona fide debts; and that the credits from which the citizen is allowed to deduct his bona fide indebtedness is not moneyed capital within the meaning of the act of Congress authorizing the taxation of the shares of national bank stock.

This defendant further answering says that he does not know
19 and is not informed, save by said bill of complaint, whether or not sundry of the stockholders of complainant's bank, and all the banks of the State of Indiana organized under the act of Congress, are indebted respectively in large sums of money, and they are not permitted by the officers enforcing the same to deduct the same from the value of said shares, and the defendant leaves the complainant to make such proof thereof as the complainant may deem advisable.

And this defendant, further answering, says that he does not know, and has not been informed, save by unreliable rumor and the complainant's said bill, whether, on the 1st day of April, 1879, $812,000 of the means of complainant, which are represented by the shares of stock by complainant's shareholders, were invested in United States bonds held by the Comptroller of the Currency for security for circulation and deposits, together with $50,000 of like bonds held as assets, and $65,000 legal-tender notes, making in all $926,000; and if said bonds and legal-tender notes were withdrawn from the assets of complainant's bank, the shares thereof would not be worth exceeding twenty dollars each. And the defendant leaves the complainant to make such proof thereof as the complainant shall be advised is wanted.

This defendant admits that the laws of said State make no provision whatever for the deduction from the taxable value of said shares of bank stock, or any of the shares of national bank situate in said State for any sums so invested in such bonds or legal-tenders. But this defendant says, that by the act of Congress creating said national banks, expressly provides that the shares of national bank stock may be assessed and taxed as personal property, by and under State authority, at the place where such bank is located. And that the law of said State of Indiana providing for the assessment and taxation of the shares of national banks, including the shares of complainant's bank, is
20 in conformity to and in pursuance of such law of Congress, and

is not a discrimination against the shares of national bank stock, but is expressly authorized by said act of Congress.

This defendant admits that, under the provisions of said State statute, in the month of May, 1879, the auditor of said county furnished the cashier of complainant's bank a blank report, and made demand that the same should be filled, signed, sworn to, and delivered to said auditor, and that it was the duty of said auditor to file the same.

And this defendant admits that the cashier of said bank did make out, sign, and swear to a schedule, and deliver the same to the auditor of said county, containing the names and residences of the shareholders, the number of shares held by each, the par value thereof, and the estimated cash-value, as fixed by said cashier, and said cashier estimated the cash-value of said shares at $100 per share.

But this defendant denies that the fair cash value of said shares was fairly valued and estimated by said cashier; that their true value at the time they were so valued by said cashier was $125 for each share of $100, and the aggregate value of all the shares of said bank was $900,000; that the board of equalization of said county assessed and valued said shares for taxation at $105 for each share of $100, making the aggregate assessed value for said 800 shares $840,000, that being less than the fair cash value of said shares. And that the auditor of said county placed the same upon the tax duplicate of said county, placing the value of complainant's real estate, in the proper column for real estate, at $28,450, and placed upon said duplicate, in the column of personal property, the sum of $811,550, making the valuation of each of said shares $105 on each $100 of stock, and the aggregate value of said 800 shares $840,000. This defendant admits that the
21 board of commissioners of said county made the proper levy for State, county, school, township, and road tax at one dollar and twenty-two cents per hundred dollars, and that the auditor computed, extended, and placed upon the tax duplicate said aggregate per cent. upon said real and personal property, so as aforesaid assessed, to the amount of $10,248, whereby said shareholders became and were charged with said taxes at the rate of $1.22 for each $100 in value of said shares.

And this defendant denies that said shares of stock were taxed at $1.23¾ on each $100 of the value of said shares; but on the contrary the tax assessed and levied was on the shares of stock valued at $1.05 on each share of $100; and the auditor in classifying the same on the duplicate placed a value upon the real estate of complainant, and in the proper column at $28,450, and the balance as personal property of the value of $811,550, making the aggregate tax on the $840,000, ten thousand two hundred and forty-eight dollars, being at the rate of $1.22 on the aggregate value of said shares of stock. And said auditor computed and carried out the tax, and placed the same on the tax duplicate.

This defendant admits that after the completion of said duplicate the same was delivered to defendant, treasurer of said county, and defendant was authorized to collect the same. And that such taxes are due and payable on or before the third Monday of April of each year, and if not paid at that time are subject to a penalty of ten per cent., and that by provision of said State statute said taxes are payable by the holders and owners of said shares, and that the said taxes are a lien upon the said shares, and such lien relates back to the 1st day of April, 1879, and takes precedence of all transfers of such shares, and that it is the duty of the officers of said complainant's bank to retain so much

of any dividend belonging to such stockholders as shall be necessary to pay said taxes.

22 And defendant admits that he is claiming that said assessment, levy, entry, charge, computation, and extension of said taxes against complainant's shareholders is legal, and he intends to collect the same according to the law of said State.

And this defendant admits that the complainant has paid the sum of $337.09, but this defendant denies that the sum yet due by complainant's shareholders and not yet paid, to wit, the sum of $9,900.91, is illegal, but on the contrary this defendant avers that said sum of $9,900.91 is justly and legally due, and owing by the shareholders of complainant's bank. That this defendant has no knowledge, save by the averments in complainant's bill of complaint, as to any litigation threatened whereby complainant will suffer a multiplicity of suits by said shareholders by his refusal to pay said dividends, or to transfer said shares, or that it will be mulcted in excessive cost and damages, or suffer in its credit or business irreparable injury, or that it has suffered in its business to the amount of $40,000 or any other sum. And defendant leaves the complainant to make such proof of said averments as complainant may be advised is material.

And this defendant, further answering, says, that the said tax on the shares of stock of the complainant's shareholders assessed and levied as aforesaid was levied and assessed upon less than the fair cash value of said shares. And that said shares are assessed and valued at the same rate as other personal property in the same locality is assessed, valued and taxed. And that if this defendant is restrained by an order of this honorable court from collecting said tax from said shareholders, then the shares of stock of complainant's shareholders will be relieved of their just share of taxes for the year 1879, except the sum of $347.08 paid by complainant as aforesaid.

23 And this defendant further says that if there is any other matter, cause, or thing in the complainant's said bill of complaint contained material as necessary for this defendant to make answer unto, and not therein well and sufficiently answered, confessed, and avoided, or denied, is not true, to the knowledge or belief of this defendant. All of which matter and things this defendant * * * * * * is ready and willing to aver and maintain * * * as this honorable court shall direct. And this defendant humbly prays to be * * * dismissed, with his reasonable costs and charges in this behalf wrongfully sustained.

THOMAS P. BRITTON,
Defendant.

H. A. MATTISON,
BUCHANAN, GOODING & BUCHANAN,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
District of Indiana, ss:

Thomas P. Britton, being duly sworn, does affirm and say that he is the defendant named in the foregoing answer subscribed by him; that he has read the same, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he verily believes them to be true.

THOMAS P. BRITTON.

Subscribed and sworn to before me this August 19, A. D. 1880.
N. C. BUTLER, *Clerk.*

24 And afterwards, to wit, on Saturday, the 11th day of September, A. D. 1880, the following further proceedings in said cause were had, to wit:

Comes this day the complainant, by Mess. Gilchrist and Butterfield and A. & J. E. Iglehart, its solicitors, and files its replication, in the words and figures following, to wit:

The replication of the Evansville National Bank, complainant, to the answer of Thomas P. Britton, treasurer of Vanderburgh County.

These repliants, saving and reserving unto themselves now and at all times hereafter, and all matter of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

ASA & J. E. IGLEHART,
GILCHRIST & BUTTERFIELD,
Complainant's Solicitors.

25 And afterwards, to wit, on Tuesday, the 8th day of February, A. D. 1881, the following further proceedings in said cause were had, to wit:

It appearing by the bill of complaint in this action and the affidavit of Alexander Gilchrist, duly verified, that sufficient grounds for an order for a temporary injunction exist, and due proof of the service of notice for the application for said having been filed, it is hereby ordered that the defendant, the said treasurer of Vanderburgh County, his deputies, agents, or servants, do refrain from collecting or attempting to collect the taxes assessed by the officers of the county of Vanderburgh for the year 1879, against the complainant, and which were entered upon the tax duplicate of said county for said year against the complainant, and from selling or offering for sale the real estate or other property of the complainant, the Evansville National Bank, for the payment of said taxes; and the said treasurer, his deputies, agents, and servants, do refrain from selling or offering for sale, or attempting to sell the real estate under the notice for delinquent tax-sales published by Will. Warren, jr., auditor of Vanderburgh County, bearing date of the 15th day of January, 1881, and directing the sale of said real estate on the 14th day of February, A. D. 1881, until the further order of this court.

26 And afterwards, to wit, on Thursday, the 6th day of October, A. D. 1881, the following further proceedings in said cause were had, to wit:

Now here, by agreement of parties, this cause is transferred to the docket of causes set for trial at Indianapolis.

Here follows the evidence taken and filed in said cause.

27 COMPLAINANT'S EVIDENCE.

In the circuit court of the United States for the district of Indiana, at Evansville.

THE EVANSVILLE NATIONAL BANK,
vs.
THOMAS P. BRITTON. } In chancery.

The defendant will take notice that on September the 18th, 1880, between the hours of 9 a. m. and 6 p. m. of said day, at the office of Asa & J. E. Iglehart, 3d street, Evansville, the complainant will proceed to take the testimony of witnesses to be read as evidence upon the hearing of said cause in said court, and will continue the same from day to day until the same is completed.

GILCHRIST & BUTTERFIELD,
ASA & J. E. IGLEHART,
Complainant's Solicitors.

We acknowledge service of the above notice by copy September 14th, 1880.

We waive dídimus, and consent that the testimony may be taken and certified by a notary public.

H. A. MATTISON,
BUCHANAN, GOODING & BUCHANAN,
Attorneys for Defendant.

Depositions of witnesses taken on the 18th day of September, 1880, between 9 o'clock a. m. and 6 o'clock p. m., in a case pending in
28 the circuit court of the United States for the district of Indiana, in chancery, wherein the Evansville National Bank, of Evansville, Indiana, is complainant, and Thomas P. Britton is defendant, in behalf of said complainant, in pursuance of the notice hereto attached.

SAMUEL BAYARD, a witness produced by the complainant, and being by me first duly sworn, deposes and says as follows, in answer to interrogatories duly propounded to him by the parties:

Q. State your name, age, residence, and occupation.

A. Samuel Bayard; am over fifty years old; live in Evansville, Indiana; am president of the Evansville National Bank.

Q. How long have you been president of said bank, and state whether, as such, you have general charge and oversight of the business of said bank.

A. I think I have been president three years, having been vice-president previously, and have had general charge and management of the affairs of the bank.

Q. In April, 1879, how many stockholders of said bank resided in the State, and how much stock did such resident stockholders own, and how many non-resident stockholders, and how much stock did they own?

A. The said bank, on the first day of April, 1879, had upon its books as stockholders (78) seventy-eight names, who were residents of the State of Indiana, owning $617,600 of the stock of said bank and 14 stockholders, who were not residents of the State of Indiana, owning $182,400 of the stock of said bank.

Q. How much, if any, of the capital stock of said bank was, at the date mentioned in your last answer, invested in United States bonds, and how much, if any, in legal-tender notes?

A. On the first day of April, 1879, the said bank held, as ap-
29 peared by its books, $862,000 in United States bonds and $64,940 in United States legal-tender notes, the capital stock being $800,000.

Q. If the United States bonds and legal-tenders mentioned in your last answer were taken from the capital stock, what would it have been worth on the first day of April, 1879?

A. The stock would not be worth anything.

Q. State whether your bank (the plaintiff) paid any taxes for the year 1879; and, if yea, how much and upon what property.

A. The bank paid State and county taxes upon the real estate held by it for the year 1879, amounting to $347.09, for which the receipt is now here produced and made a part of my deposition, marked Complainant's Exhibit A:

EXHIBIT A.

No. 983.

TREASURER'S OFFICE, CITY TOWNSHIP,
Evansville, Vanderburgh County, Ind., April 1st, 1880.

Received of Evansville National Bank the sum of three hundred forty-seven and $\frac{9}{100}$ dollars, in full for State and county tax for the year 1879 on the following described property:

Description.	Sec.	Town.	Range.	Acr's hund.	Lot.	Bl'k or sq.
Original plan, less 5 x 144					35	
Chandler & Allis' sub					4	
" " "					5	
" " " personals unpaid					6	

THOMAS P. BRITTON,
Treasurer Vanderburg County.
$347.09. Per MARTIN MANN, *Deputy.*

Q. Who has been accustomed to pay the taxes (State and county) upon the shares of stock of the Evansville National Bank since 1872—the shareholders themselves or the bank?

A. The bank has heretofore paid the taxes.

Q. State whether this payment has been with or without the assent of the stockholders.

A. The taxes were paid heretofore by the bank, by consent of
30 the stockholders, who did not object to such payment.

Q. How was the bank reimbursed by the stockholders?

A. The bank was not reimbursed by the stockholders; the taxes paid were charged to expenses.

Q. What effect would such payment and charging to expenses have upon the dividends of the shareholders?

A. It lessens the net profits of the bank, and, consequently, it lessens the dividends.

Q. Why was the payment of the State and county taxes levied against the shares of said bank or its capital stock for 1879 refused by the bank?

A. The bank did not pay the taxes for 1879, because the shareholders, being advised that they were illegal, forbade their payment.

Q. To what extent did the objection to the payment of said taxes prevail among stockholders?

A. The large stockholders of the bank, holding a large majority of the stock of the bank, objected to the paying of such taxes.

Q. State whether you were on the 1st day of April, 1879, a stockholder in said bank; and, if yea, how much of the capital stock did you own, how many shares, and the par value of each share?

A. On the 1st day of April, 1879, I held in my own name $35,000, say 350 shares, of the par value of $100.

Q. State whether at that date, on that day, you were indebted in any sum; and, if yea, about how much?

A. My indebtedness at that time was about $15,000.

Q. State whether at that date you were the owner of any taxable credits from which you either did deduct, or could have deducted, said indebtedness, in listing your property for assessment for taxation.

(Objected to by counsel for defendant for irrelevancy and incompetency.)

31 A. I had nothing due me either by note or book account from which I could deduct my indebtedness.

Q. Had you at that date any demand, either against individuals or bodies corporate, containing a money value?

A. I had nothing due me of any value.

Cross-examined by counsel for defendant.

By consent of counsel, the further taking of these depositions is postponed till Monday morning, September 20th, 1880, at 9 o'clock a. m.

9 a. m. MONDAY, *September 20th.*

The parties met pursuant to adjournment, and the cross-examination of the witness by the counsel for defendant proceeded, as follows:

Q. You stated in your direct examination that the bank had invested in United States bonds $862,000 on the first day of April, 1879; where were those bonds—that is, in whose possession were they at that time?

A. $12,000 were deposited with the Treasurer of the United States, and $50,000 were held by the bank.

Q. The $12,000 deposited with the Treasurer of the United States were deposited for the purpose of securing the circulation and deposits of the bank, were they not?

A. They were deposited to secure the circulation and the United States deposits held by the bank.

Q. You stated in your direct examination that your bank, on the first day of April, 1879, had invested in legal-tender notes $64,940; where were those legal-tender notes on the 1st day of April, 1879, and in whose possession?

A. They were in the vault of the bank, and in the possession of the cashier.

Q. How long had they been in the bank?

A. They had been there a year or two; were held as a reserve of the bank.

32 Q. What amount of money had your bank on the 1st day of April, 1879, not including legal-tender notes?

(Objected to by counsel for complainant for irrelevancy.)

A. I cannot tell without reference to the books.

Q. Are these books in your bank in this city?

A. Yes, sir.

Q. Will you look at your books, and please state the amount of money in your bank on the 1st day of April, 1879, not including legal-tender notes?

A. The amount is $41,922.60.

Q. What was the aggregate amount of the bills receivable of your bank on the 1st day of April, 1879?

A. The amount is $971,229.38.

Q. What was the actual cash value of the bills receivable by your books on the 1st day of April, 1879?

A. It is perhaps a safe estimate to state that the bad and doubtful debts and incidental costs of collection, would be about ten per cent., or say, ninety-seven thousand dollars, which, deducted from the $971,229 38, would leave a cash value of bills receivable of about $874,229 38.

Q. What was the cash value of the personal property of your bank, on the 1st day of April, 1879, not including United States bonds, legal-tender notes, money on hand, and bills receivable? Please state fully, and give a description of the same as near as you can.

A. We have a personal account upon our books, an account of personal property, the amount of which is $4,200. It embraces safes and furniture.

Q. What was the amount of the reserve or surplus fund of your bank on the 1st day of April, 1879?

A. The amount required by law, twenty per cent. of the capital stock.

Q. In what was it invested, if invested at all?

A. It was used as part of the general fund of the bank.

33 Q. What was the amount of the undivided profits of your bank on the first day of April, 1879, and in what was it invested? State fully.

A. We had no undivided profits, beyond the current profits from January 1st, which amounted to $29,093.98 which were part of the general funds of the bank.

Q. What was the aggregate amount of the deposits held by your bank on the 1st day of April, 1879?

A. The total deposits were $552,561 47.

Q. What was the indebtedness of your bank on the first day of April, 1879, not including the indebtedness of the bank to depositors?

A. The indebtedness of the bank, consisted in the amount due depositors, say, $552,561.47, and its circulation, $638,500.

Q. What was the amount of bank bills issued by your bank for circulation outstanding on the first day of April, 1879?

A. $638,500.

Q. When you paid the taxes on the real estate belonging to your bank on the first day of April, 1880, did you not demand that the treasurer of the county, T. P. Britton, or his deputy, Ed. Mann, should give

you a receipt for the $347.09, showing on the face of the receipt that it was given for taxes on the real estate of the bank?

A. We proposed to pay the taxes on the real estate only; the amount was accepted, and the receipt given to the bank: it was the instruction to the cashier to pay taxes on the real estate only; I did not see it paid; the cashier paid it.

Q. Were not the shares of the capital stock of your bank assessed and valued for taxation by the board of equalization of Vanderburgh County, Indiana, for the year 1879, at $1.05 for each share of $100, and did not the aggregate value of all the shares, including the real estate as assessed by said board, amount to $840,000?

34 (Objected to by counsel for complainant, 1st, because it is not responsive to anything, about which the witness testified in chief and therefore, not a proper cross-examination; 2d, because all the proceedings of tax officers, are required to be in writing, and the originals or copies of such writings are the only proper evidence.)

A. I cannot answer the question without reference to the tax duplicate.

Q. Did you know at the time you received said receipt that the aggregate amount of the shares of the capital stock of your bank, including its real estate, was assessed by said board of equalization at $840,000?

A. I did not examine tax duplicate, and if the amount came to my knowledge it was reported to me by our cashier.

Q. Did the fact come to your knowledge?

A. I have no distinct recollection of the amount.

Q. You state that on the first day of April, 1879, you were individually indebted in the sum of $15,000. Now, state to whom you were indebted?

A. It was for borrowed money from the banks—the Evansville National Bank, and perhaps the German National Bank.

Q. How much did you owe the Evansville National Bank on the 1st day of April, 1879?

A. The books show $15,000.

Q. How much did you owe the German National Bank on the first day of April, 1879?

A. I don't remember that I owed anything to that bank. I say, perhaps I did. I didn't examine the books.

Q. How long had you owed $15,000 to the Evansville National Bank prior to the first day of April, 1879?

A. I can't answer that without reference to the books.

35 Q. Do you mean to state, Mr. Bayard, that you actually owed the Evansville National Bank, on the first day of April, 1879, about $15,000?

A. I do; the bank had my notes for $15,000 on that day.

Q. How long had they held these notes prior to the first day of April, 1879?

A. I may have owed that two or three months before that day; the bank happened to hold my notes for that amount at that time, and may have held them for that sum two or three months previous to that day.

Q. You state in your examination-in-chief that on the first day of April, 1879, you had no credits from which you could deduct your bona fide indebtedness in listing your property for taxation. Do you mean to be understood by this that no person, persons, or bodies corporate were indebted to you at that time in any sum?

A. I stated that I had nothing due me of any value.

Q. Had you anything owing to you that was not due, of any value?

A. Nothing.

Q. Have you examined your books since you were here in the forenoon, and can you now answer how long you had owed the sum of about $15,000 to the Evansville National Bank, before the first of April, 1879?

A. No; I did not examine the books for that purpose.

Q. In answer to question nine of the cross-examination you state that the bills receivable, amounting to $971,229.38, were worth their face less ten per cent. I will now ask you if you did not collect and have secured the whole of said sum of $971,229.38 since the first day of April, 1879; if not, what part has been lost?

A. I can't state what part has been lost without referring to
36 the books. We have some paper which is not due, and will not mature for two or three years, and we have a large part also which has been received from time to time, and is still held by the bank. My estimate was made at ten per cent., to fix a cash value of the bills receivable, if the collection of the same had been forced at that time.

Q. Of the bills receivable that run two or three years, from the first of April, 1879, how often have the makers of the same paid you interest since April 1st, 1879?

A. On some of the paper the interest is paid semi-annually, some yearly, and part of the interest is now past due.

Q. How much of the interest is now past due, and on whose paper?

A. I cannot answer that question without reference to the books.

Q. Is there a large or small proportion of the interest on this paper past due?

A. Well, the amount may be two or three thousand dollars; I can't say without looking at the books.

Q. You require good and solvent security on all loans made by your bank, and when the notes are received, do you not?

A. Of course.

Q. Do you insert in all your notes for money loaned, or for the renewal of notes, an agreement that the maker should pay an attorney's fee?

A. We generally do, but we occasionally take paper without that clause.

Q. In answer to question 10 of your cross examination, you state that the personal property is entered in your books at the value of $1,200. Do you mean to say that that is a fair cash value of your personal property referred to in that question, and answered on the 1st day of April, 1879?

A. I stated that we had an account of personal property upon our books, to which account is charged the cost of our safes, desks,
37 and other furniture, and that is what I mean by our personal property, and it is a fair valuation.

Q. In answer to question 11 of your cross-examination, you state that the surplus or reserve fund of your bank, on the 1st day of April, 1879, was 20 per cent. of the capital stock of the bank. Will you now state how much more of reserve or surplus fund you had on the 1st of April, 1879, over and above 20 per cent. of the capital stock?

A. We had none.

Q. What was the value of the real estate belonging to your bank on the 1st day of April, 1879?

A. I can't answer you without referring to the duplicate. I am no judge of real estate. I can't fix any value.

SAM'L BAYARD.

FRED. A. PRESTON, a witness produced by the complainant, being by me first duly sworn, deposes and says as follows, in answer to interrogatories duly propounded to him by the parties:

Q. State your name, age, residence and occupation.

A. Fred. A. Preston; am 37 years old; Evansville, Indiana; grocery business; been here 20 years.

Q. On the 1st day of April, 1879, did you own stock in the Evansville National Bank; and, if so, how much?

A. I have got 65 shares.

Q. At that date were you indebted in any sum; and if so, how much?

A. I was indebted at that time about $3,000; it may be a little more or a little less; I can't tell exactly.

Q. Had you any taxable credits from which you could deduct this indebtedness in the schedule made for the purpose of assessment?

A. I did not.

Cross-examination by counsel for defendant:

38 Q. On the 1st day of April, 1879, did anybody owe you any sum of money?

A. No, sir.

Q. This $3,000 of indebtedness, was it an individual debt or a debt of your firm?

A. An individual debt.

Q. What was the indebtedness incurred for?

A. It was for stock bought. I owed about $2,250 for bank stock, and the balance for a loss I sustained.

Q. Was that loss you sustained for insurance stock?

A. No, sir.

Recalled by counsel for plaintiff.

Q. Was the debt you speak of for bank stock, for subscription or for stock which you had bought and not paid for?

A. For stock I had bought and not paid for. German National Bank stock.

FRED. A. PRESTON.

JNO. D. PRESTON, a witness produced by the complainant, being by me first duly sworn, deposes and says as follows, in answer to interrogatories duly propounded to him by the parties.

Q. What is your name, age, residence, and occupation?

A. Jno. D. Preston; am 35 years old; live in Evansville; am in the grocery business.

Q. State whether or not on the 1st day of April, 1879, you were a stockholder in the Evansville National Bank; and, if yea, state how many shares of the capital stock of said bank you owned at that date?

A. Yes, I was a stockholder. I owned 135 shares.

Q. State whether on that day you were indebted in any amount; and, if yea, in what sum?

A. Well, about $3,500 for stock.

Q. Was the indebtedness upon subscription for stock, or upon
39 purchase of shares of stock purchased by and assigned to you?

A. It was for the purchase of different stocks.

Q. State whether at that date, you had any taxable credits, that is, any money owing to you from which you did or could have deducted said indebtedness in making your schedule for taxation?

A. No, sir.

Cross-examined by counsel for defendant.

Q. What do you understand by taxable credits?
A. Money due me from any source outside of my firm business.
Q. What kind of stock for which this indebtedness was incurred?
A. Bank stock.
Q. When did you buy this stock?
A. I don't remember exactly; have been buying it for 10 years; no particular purchase.

JNO. D. PRESTON.

By consent of counsel the further taking of these depositions is postponed until Tuesday morning at 9 o'clock.

TUESDAY, 9 o'clock, a. m.

The parties met pursuant to postponement, and David J. Mackey, a witness produced by the complainant, being first duly sworn by me, testified as follows, in answer to interrogatories duly propounded to him by the parties:

Q. What is your name, age, residence and occupation?
A. David J. Mackey; age 47; residence Evansville; dry goods business.
Q. State whether on the 1st day of April, 1879, you were a stockholder in the Evansville National Bank; and, if yea, how much of the capital stock of said bank you owned?
A. I was a stockholder, and owned $73,000 in stock on that date.
Q. State whether at said date you were indebted in any amount; and, if yea, about how much?
40 A. I was indebted to the bank at that time $35,000.
Q. State whether at said date you had any taxable credits; that is, monies owing to you from which you did deduct or could have deducted said indebtedness, or any part thereof, in making your schedule for taxation for that year?
A. I did not deduct anything and was not in a situation to so deduct it.
Q. Please explain why you were in a situation not to be able to deduct said indebtedness?
A. I had no monies due me individually.

Cross-examination by counsel for defendant:

Q. You say in your direct examination that you were indebted to the bank in the sum of $35,000, on the 1st of April, 1879. Was that your individual debt, or were you so indebted as endorser for someone else?
A. It was my individual debt.
Q. Had you no debts owing to you individually?
A. No, sir.

D. J. MACKEY.

Fees ten ($10) dollars, paid by complainant.

R. M. GOODLETT,
Notary Public.

STATE OF INDIANA,
Vanderburgh County, ss:

I, Robert M. Goodlett, a notary public, in and for said county, do hereby certify that Samuel Bayard, Fred. A. Preston, John D. Preston,

and D. J. Mackey, the above-named deponents, were by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, in the cause now pending in the United States circuit court for the district of Indiana, wherein the Evansville National Bank is plaintiff and Thomas P. Britton is defendant; that the foregoing depositions were all written by me, and that said deponents severally subscribed their respective depositions after the same had been carefully read over
41 to them by me; that Thomas P. Britton was present by his attorney at the taking of said depositions, which were taken at the office of Asa Iglehart, in the city of Evansville, county of Vanderburgh, State of Indiana, on the 18th, 20th and 21st days of September, 1880, between the hours of 9 o'clock, a. m., and 6 o'clock, p. m. of said days, agreeably in all respects to the annexed notice.

In witness whereof, I hereunto subscribe my name and affix my official seal this 6th day of October, A. D., 1880.

[SEAL.] R. M. GOODLETT,
Notary Public.

In the circuit court of the United States, for the district of Indiana.

THE EVANSVILLE NATIONAL BANK, OF EVANSville, Indiana.
vs.
THOMAS P. BRITTON.
} In chancery.

The defendant is hereby notified that the plaintiff will proceed to take the deposition of witnesses in the above-entitled cause, at the law office of A. & J. E. Iglehart, in the city of Evansville, Vanderburgh County, Indiana, on Wednesday, the 27th day of October, A. D. 1880, and continue from day to day until the same are completed, between the hours of 9 a. m. and 6 p. m. of said days.

ASA & J. E. IGLEHART,
Attorneys for Plaintiff.

We hereby acknowledge service, and consent that said depo-
42 sitions may be taken before John Lenihan, jr., as notary public and examiner, this 25th day of October, 1880.

BUCHANAN, GOODING & BUCHANAN,
Of Counsel for Plaintiff.

Evidence taken on the 27th day of October, A. D. 1880, between the hours of nine a. m. and six p. m., at the office of A. & J. E. Iglehart, Evansville, Indiana, before John Lenihan, jr., notary public and examiner, in behalf of the complainant in a certain case now pending in the circuit court of the United States for the district of Indiana, wherein the Evansville National Bank is complainant and Thomas P. Britton respondent, pursuant to the notice hereto attached.

THURSDAY, *October 28th*, 1880.

By consent of counsel for the respective parties, the taking of these depositions is now adjourned until to-morrow, the 28th day of October, A. D. 1880.

JOHN LENIHAN, JR., *Examiner.*

By consent of counsel for the respective parties, the taking of these depositions is now adjourned until to-morrow, Friday, the 29th day of October, A. D. 1880.

JOHN LENIHAN, JR., *Examiner.*

FRIDAY, *October 29th*, 1880.

Come now the complainants, by Alexander Gilchrist and Asa & J. E. Iglehart, its solicitors, and the defendant, by H. A. Mattison, county attorney, and Buchanan, Gooding, and Buchanan, his solicitors, and thereupon, by agreement of counsel for the respective parties, the taking of the evidence on behalf of the complainant:

1. The complainant produces and offers in evidence a transcript of the duplicate entries for 1879, for State and county taxes against the complainant's bank, duly certified by the auditor.

(Objected to by respondent for irrelevancy and incompetency.

43 Objections to the formality of the certificate are waived by respondent.)

The transcript is now admitted over the objection of respondent and identified by my name, John Lenihan, jr., as examiner, being written on the backs, and also as Exhibit A.

EXHIBIT A.

CITY OF EVANSVILLE, *Pigeon Township, No.* .

Tax duplicate of Vanderburgh County for 1879

No	Name of owners	Descriptions of lands & lots	Lot.	Blk.	Value of lots.	Value of imp'ts.	Val. of per'l prop'y.	Total val. of taxes.	1st install't in cl'g r. t.	Second installment.	T'l tax due Dec. 1879.
1436	Citizens' National Bank						200,000	200,000	1,220	1,220	2,440 00
1687	Evansville National Bank	Original plan, less 5 by 144	35		14,875	6,000					
		Chandler & Allis, sub	4		2,720	350					
			5		2,550						
			6		1,955		811,550	840,000	512,400	5,124	102 48
1863	First National Bank	Original plan, 18¾ by 70	38		3,575	8,000					
		Fourth enlarg't and ½ of 12 f't	21	13	125						
		" " and ½ of	22	13	255	1,100	537,270	550,325	335,698	3,356 98	6,713 96
2317	German National Bank						250,000	250,000	152,500	1,525 00	3,050 00
2403	Merchant's National Bank	Original plan, 24 by 90 f't, 1 sub	61								
		" " 30 by 14 f't, 2 "	61		6,055	20,000					
		Bray & Cooke's addition	10	28	215						
			11	28	215						
		Springdale	1	5	150						
			2	5	130						
		Fourth end and ½	22	13							
		" " and ½ of 12 f't 80j	21	13			226,590	254,830	155,446	1,554 46	3,108 92

I certify that the above is a true copy of the duplicate for 1879.

WILL. WARREN,
Auditor Vanderburgh County.

44 And thereupon the complainant offers in evidence a certified transcript of the tax statement of Woollen, Webb & Co., of Indianapolis, with the assessor's analysis, preparatory to listing the property of said firm for taxation in Marion County.

(Objected to by respondent as immaterial and irrelevant and incompetent, for the reason that the paper and writing thereon in no way connects the respondent herein with the paper and writing thereon.)

And thereupon said certified transcript is received in evidence, indorsed by the examiner with his signature as Exhibit B.

EXHIBIT B.

Statement by Woollen, Webb & Co., of Indianapolis, Marion County, Indiana, as required by section 57 of an act of the legislature of the State of Indiana, entitled "An act for the assessment of property and for the levy and return of taxes thereon," approved December 21, 1872:

	Amount.
First. Money on hand or in transit	$2,696 63
Second. Funds in the hands of other banks, bankers, brokers, and others, subject to draft	
Third. The amount of checks or other cash items, the amount thereof not being included in either of the preceding items	
Fourth. The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable and interest accrued, but not due, and interest due and unpaid	83,538 59
Fifth. The amount of bonds and stocks of every kind and shares of capital stock of joint stock or other companies or corporations, held as an investment, or in any way representing assets	21,650 00
Sixth. All other property appertaining to said business, other than real estate (which real estate is to be listed and assessed as other similar property is listed and assessed.) (See foot-note)	2,000 00
Seventh. The amount of all deposits made with them by other parties	96,100 79
Eighth. The amount of all accounts payable, other than current deposit accounts	
Ninth. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item	21,650 00
Tenth. United States 4 per cent. coupon bonds	5,000 00
Eleventh. United States legal tender notes	17,650 00

I, William W. Woollen, of the firm of Woollen, Webb & Co., do solemnly swear that the above statement is true, according to the best of my knowledge and belief.

(Signed) W. W. WOOLLEN.

45 Subscribed and sworn to before me, this 17th day of April, 1879.

(Signed) J. W. COFFIN,
Deputy Assessor.

Assessor's analysis preparatory to listing for taxation.

First item	$2,696 63	Fourth item	$83,538 59
Second item		Seventh item	$96,100 79
Third item		Eighth item.	
Aggregate amount to be listed as moneys (No. 5 of schedule)	2,696 63	Aggregate of seventh and eighth (to be deducted from fourth)	
		Amount remaining (to be listed as credits). (No. 4 of schedule)	
Aggregate amount of fifth item			$21,650 00
Aggregate amount of ninth item to be deduced from fifth item			21,650 00
Remainder to be listed as bonds and stocks			
Moneys	$2,696 63		
"	2,000 00		
Total	$4,696 63		

NOTE TO ASSESSOR.—Item sixth includes safes, office furniture, and all other personal property not herein enumerated, and should be distributed to the amount stated to items 31, 20, etc., of the regular schedule.

STATE OF INDIANA,
Marion County, ss:

I, W. A. Pfaff, auditor in and for said county, do hereby certify that the within is a true copy of the statement on file in my office.

Witness my hand and seal this 24th day of September, 1880.

[SEAL.] WM. A PFAFF,
A. M. C.

And thereupon the complainant offers in evidence a certified transcript of the tax-statement of S. A. Fletcher & Co., with the assessor's analysis, preparatory to listing the property of said firm for taxation in Marion County.

(Objected to by respondent as immaterial and irrelevant and incompetent, for the reason that the paper and writing thereon in no way connects the respondent with the paper and writing thereon.)

And thereupon said certified transcript is received in evidence, indorsed by the examiner with his signature as Exhibit C.

46 EXHIBIT C.

Statement by S. A. Fletcher & Co., bankers, Marion County, Indiana as required by section 57 of an act of the legislature of the State of Indiana, entitled "An act for the assessment of property and for the levy and return of taxes thereon," approved december 21, 1872:

	Amount.
First. Money on hand or in transit	$25,600
Second. Funds in the hands of other banks, bankers, brokers, and others, subject to draft	15,350
Third. The amount of checks, or other cash items, the amount thereof not being included in either of the preceding items.	

Fourth. The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable and interest accrued but not due, and interest due and unpaid 586, 700

Fifth. The amount of bonds and stocks of every kind, and shares of capital stock of joint stock or other companies or corporations held as an investment or in any way representing assets 535, 000

Sixth. All other property appertaining to said business, other than real estate (which real estate is to be listed and assessed as other similar property is listed and assessed). (See foot-note) 2, 500

Seventh. The amount of all deposits made with them by other parties 785, 400

Eighth. The amount of all accounts payable, other than current deposit accounts .....

Ninth. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item 535, 000

Tenth. United States 4 per cent. bonds 235, 000

Eleventh. United States Treasury notes—greenbacks 150, 000

Twelfth. Asset stocks 150, 000

I, Francis M. Churchman, of the firm of S. A. Fletcher & Co., bankers, do solemnly swear that the above statement is true, according to the best of my knowledge and belief.

(Signed) FRANCIS M. CHURCHMAN.

Subscribed and sworn to before me this 28th day of April, 1879.

(Signed) J. W. COFFIN,
Deputy Assessor.

Assessor's analysis preparatory to listing for taxation.

First item	$25, 600	Fourth item	$586, 700
Second item	15, 350	Seventh item. $785, 400	
Third item		Eighth item:	
Aggregate amount to be listed as moneys (No. 5 of schedule)	40, 950	Aggregate of seventh and eighth (to be deducted from fourth) ..	785, 400
		Amount remaining (to be listed as credits) (No. 4 of schedule) ...	
Aggregate amount of fifth item		$535, 000	
Aggregate amount of ninth item, to be deducted from fifth item		535, 000	
Remainder to be listed as bonds and stocks			
Moneys	$40, 950		
"	2, 500		
Total	$43, 450		

NOTE TO ASSESSOR.—Item sixth includes safes, office furniture, and all other personal property not herein enumerated, and should be distributed to the amount stated to items 31, 20, etc., of the regular schedule.

STATE OF INDIANA,
Marion County, ss:

I, W. A. Pfaff, auditor in and for said county, do hereby certify that the within is a true copy of the statement on file in my office.

Witness my hand and seal this 24th day of September, 1880.

[SEAL.] WM. A. PFAFF, *A. M. C.*

And thereupon the complainant offers in evidence a certified transcript of the tax-statement of Fletcher & Sharpe, with the assessor's analysis, preparatory to listing the property of said firm for taxation in Marion County.

(Objected to by respondent as immaterial and irrelevant and incompetent, for the reason that the paper and writing thereon in no way connects the respondent with the paper and writing thereon.)

And thereupon said certified transcript is received in evidence, indorsed by the examiner with his signature, as Exhibit D.

47 EXHIBIT D.

Statement by Fletcher & Shape, Marion County, Indiana, as required by section 57 of an act of the legislature of the State of Indiana, entitled "An act for the assessment of property and for the levy and return of taxes thereon," approved December 21, 1872:

	Amount.
First. Money on hand or in transit	$60,892
Second. Funds in the hands of other banks, bankers, brokers, and others, subject to draft	22,500
Third. The amount of checks, or other cash items, the amount thereof not being included in either of the preceding items.	
Fourth. The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable and interest accrued but not due, and interest due and unpaid	771,726
Fifth. The amount of bonds and stocks of every kind, and shares of capital stock of joint stock or other companies or corporations held as an investment or in any way representing assets	
Sixth. All other property appertaining to said business, other than real estate (which real estate is to be listed and assessed as other similar property is listed and assessed). (See foot-note)	
Seventh. The amount of all deposits made with them by other parties	937,000
Eighth. The amount of all accounts payable, other than current deposit accounts	
Ninth. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item	
Tenth. United States 4 per cent. bonds	
Eleventh. United States Treasury notes—greenbacks	
Twelfth. Asset stocks	

I, Albert E. Fletcher, do solemnly swear that the above statement is true, according to the best of my knowledge and belief.

(Signed) ALBERT E. FLETCHER.

Subscribed and sworn to before me this 22d day of April, 1879.
(Signed) J. W. COFFIN,
Deputy Assessor.

Assessor's analysis preparatory to listing for taxation.

First item	$60,892	Fourth item	$771,726
Second item	22,500	Seventh item	$937,000
Third item		Eighth item	
Aggregate amount to be listed as moneys (No. 5 of schedule)	83,392	Aggregate of seventh and eighth (to be deducted from fourth)	
		Amount remaining (to be listed as credits) (No. 4 of schedule)	

Aggregate amount of fifth item ..... $
Aggregate amount of ninth item, to be deducted from fifth item .....
Remainder to be listed as bonds and stocks .....
Moneys, $83,392.
"

Total $

NOTE TO ASSESSOR.—Item sixth includes safes, office furniture, and all other personal property not herein enumerated, and should be distributed to the amount stated to items 31, 20, etc., of the regular schedule.

48 EXHIBIT E.

Statement by Indiana Banking Co., of Indianapolis, Marion County, Indiana, as required by section 57 of an act of the legislature of the State of Indiana, entitled "An act for the assessment of property and for the levy and return of taxes thereon," approved December 21, 1872:

	Amount.
First. Money on hand or in transit, $225,996, less legal-tenders, $217,000	$8,966
Second. Funds in the hands of other banks, bankers, brokers, and others, subject to draft	15,681
Third. The amount of checks, or other cash items, the amount thereof not being included in either of the preceding items	
Fourth. The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable and interest accrued but not due, and interest due and unpaid	741,985
Fifth. The amount of bonds and stocks of every kind, and shares of capital stock of joint stock or other companies or corporations held as an investment or in any way representing assets	70,000
Sixth. All other property appertaining to said business, other than real estate (which real estate is to be listed and assessed as other similar property is listed and assessed). (See foot-note)	

STATE OF INDIANA,
Marion County, ss:

I, W. A. Pfaff, auditor in and for said county, do hereby certify that the within is a true copy of the statement on file in my office.

Witness my hand and seal this 24th day of September, 1880.

[SEAL.] WM. A. PFAFF, *A. M. C.*

And thereupon the complainant offers in evidence a certified transcript of the tax-statement of Fletcher & Sharpe, with the assessor's analysis, preparatory to listing the property of said firm for taxation in Marion County.

(Objected to by respondent as immaterial and irrelevant and incompetent, for the reason that the paper and writing thereon in no way connects the respondent with the paper and writing thereon.)

And thereupon said certified transcript is received in evidence, indorsed by the examiner with his signature, as Exhibit D.

47 EXHIBIT D.

Statement by Fletcher & Shape, Marion County, Indiana, as required by section 57 of an act of the legislature of the State of Indiana, entitled "An act for the assessment of property and for the levy and return of taxes thereon," approved December 21, 1872:

	Amount.
First. Money on hand or in transit	860, 892
Second. Funds in the hands of other banks, bankers, brokers, and others, subject to draft	22, 500
Third. The amount of checks, or other cash items, the amount thereof not being included in either of the preceding items.	
Fourth. The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable and interest accrued but not due, and interest due and unpaid	771, 726
Fifth. The amount of bonds and stocks of every kind, and shares of capital stock of joint stock or other companies or corporations held as an investment or in any way representing assets	
Sixth. All other property appertaining to said business, other than real estate (which real estate is to be listed and assessed as other similar property is listed and assessed). (See foot-note)	
Seventh. The amount of all deposits made with them by other parties	937, 000
Eighth. The amount of all accounts payable, other than current deposit accounts	
Ninth. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item	
Tenth. United States 4 per cent. bonds	
Eleventh. United States Treasury notes—greenbacks	
Twelfth. Asset stocks	

I, Albert E. Fletcher, do solemnly swear that the above statement is true, according to the best of my knowledge and belief.

(Signed) ALBERT E. FLETCHER.

Subscribed and sworn to before me this 22d day of April, 1879.
(Signed) J. W. COFFIN,
Deputy Assessor.

Assessor's analysis preparatory to listing for taxation.

First item	$60,892	Fourth item	$771,726
Second item	22,500	Seventh item	$937,000
Third item		Eighth item	
Aggregate amount to be listed as moneys (No. 5 of schedule)	83,392	Aggregate of seventh and eighth (to be deducted from fourth)	
		Amount remaining (to be listed as credits) (No. 4 of schedule)	

Aggregate amount of fifth item ..... $
Aggregate amount of ninth item, to be deducted from fifth item .....
Remainder to be listed as bonds and stocks .....
Moneys, $83,392.
"

Total $

NOTE TO ASSESSOR.—Item sixth includes safes, office furniture, and all other personal property not herein enumerated, and should be distributed to the amount stated to items 31, 20, etc., of the regular schedule.

48 EXHIBIT E.

Statement by Indiana Banking Co., of Indianapolis, Marion County, Indiana, as required by section 57 of an act of the legislature of the State of Indiana, entitled "An act for the assessment of property and for the levy and return of taxes thereon," approved December 21, 1872:

	Amount.
First. Money on hand or in transit, $225,996, less legal-tenders, $217,000	$8,966
Second. Funds in the hands of other banks, bankers, brokers, and others, subject to draft	15,681
Third. The amount of checks, or other cash items, the amount thereof not being included in either of the preceding items	
Fourth. The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable and interest accrued but not due, and interest due and unpaid	741,985
Fifth. The amount of bonds and stocks of every kind, and shares of capital stock of joint stock or other companies or corporations held as an investment or in any way representing assets	70,000
Sixth. All other property appertaining to said business, other than real estate (which real estate is to be listed and assessed as other similar property is listed and assessed). (See foot-note)	

Seventh. The amount of all deposits made with them by other parties	747,668 17
Eighth. The amount of all accounts payable, other than current deposit accounts	1,805
Ninth. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item.	
Tenth. United States 4 per cent. bonds	
Eleventh. United States treasury notes—greenbacks	

I, F. A. W. Davis, do solemnly swear that the above statement is true, according to the best of my knowledge and belief.

(Signed) F. A. W. DAVIS, *Cas.*

Subscribed and sworn to before me this 28th day of April, 1879.

(Signed) Z. W. COFFIN,
Deputy Assessor.

Assessor's analysis preparatory to listing for taxation.

First item	$8,966	Fourth item	$741,985
Second item	15,681	Seventh item	$747,668 17
Third item		Eighth item	
Aggregate amount to be listed as moneys (No. 5 of schedule)	24,647	Aggregate of seventh and eighth (to be deducted from fourth)	
		Amount remaining (to be listed as credits) (No. 4 of schedule)	
Aggregate amount of fifth item			$70,000
Aggregate amount of ninth item, to be deducted from fifth item			
Remainder to be listed as bonds and stocks			
Moneys, $24,647.		Bonds and stocks	$70,000
Total $			

NOTE TO ASSESSOR.—Item sixth includes safes, office furniture, and all other personal property not herein enumerated, and should distributed to the amount stated to items 31, 20, etc., of the regular schedule.

49 STATE OF INDIANA,
Marion County, ss:

I, W. A. Pfaff, auditor in and for said county, do hereby certify that the within is a true copy of the statement on file in my office.

Witness my hand and seal this 24th day of September, 1880.

[SEAL.] WM. A. PFAFF, *A. M. C.*

And thereupon the complainant offers in evidence a certified transcript of the tax-statement of the Central Bank, with the assessor's analysis, preparatory to listing the property of said firm for taxation in Marion County.

(Objected to by respondent as immaterial and irrelevant and incom-

petent, for the reason that the paper and writing thereon in no way connects the respondent with the paper and writing thereon.)

And thereupon said certified transcript is received in evidence, indorsed by the examiner with his signature, as Exhibit F.

EXHIBIT F.

Statement by Central Bank, Marion County, Indiana, as required by section 57 of an act of the legislature of the State of Indiana, entitled "An act for the assessment of property and for the levy and return of taxes thereon," approved December 21, 1872.

	Amount.
First. Money on hand or in transit	$1,741
Second. Funds in the hands of other banks, bankers, brokers and others, subject to draft	3,630
Third. The amount of checks, or other cash items, the amount thereof not being included in either of the preceding items.	
Fourth. The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable and interest accrued but not due, and interest due and unpaid	50,982
Fifth. The amount of bonds and stocks of every kind, and shares of capital stock of joint stock or other companies or corporations held as an investment or in any way representing assets	
Sixth. All other property appertaining to said business, other than real estate (which real estate is to be listed and assessed as other similar property is listed and assessed). (See footnote.)	1,000
Seventh. The amount of all deposits made with them by other parties	50,000
Eighth. The amount of all accounts payable, other than current deposit accounts	
Ninth. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item. Legal tender notes	3,000
Tenth. United States 4 per cent. bonds	
Eleventh. United States treasury notes—greenbacks	

I, R. F. Kennedy, do solemnly swear that the above statement is true, according to the best of my knowledge and belief.

(Signed) R. F. KENNEDY.

Subscribed and sworn to before me this 21st day of April, 1879.

(Signed) Z. W. COFFIN,
Deputy Assessor.

Assessor's analysis preparatory to listing for taxation.

First item	$1,741	Fourth item	$50,982
Second item	3,630	Seventh item	$50,000
Third item		Eighth item	
Aggregate amount to be listed as moneys (No. 5 of schedule)	5,371	Aggregate of seventh and eighth (to be deducted from fourth)	50,000
		Amount remaining (to be listed as credits) (No. 4 of schedule)	982

Aggregate amount of fifth item	$
Aggregate amount of ninth item, to be deducted from fifth item	30,000
Remainder to be listed as bonds and stocks	
Moneys, $5,371. Credits, $982. Bonds and stocks, $	
Total, $	

NOTE TO ASSESSOR.—Item sixth includes safes, office furniture, and all other personal property not herein enumerated, and should be distributed to the amount stated to items 31, 20, etc., of the regular schedule.

50 STATE OF INDIANA,
Marion County, ss:

I, W. A. Pfaff, auditor in and for said county, do hereby certify that the within is a true copy of the statement on file in my office.

Witness my hand and seal this 24th day of September, 1880.

[SEAL.] WM. A. PFAFF, *A. M. C.*

And thereupon the complainant offers in evidence a certified transcript of the tax-statement of A. & J. C. S. Harrison, with the assessor's analysis preparatory to listing the property of said firm for taxation in Marion County.

(Objected to by respondent as immaterial and irrelevant and incompetent, for the reason that the paper and writing thereon in no way connects the respondent with the paper and writing thereon.)

And thereupon said certified transcript is received in evidence, indorsed by the examiner with his signature, as Exhibit G.

EXHIBIT G.

Statement by A. and John C. S. Harrison, Indianapolis, Marion Co., Indiana, as required by section 57 of an act of the legislature of the State of Indiana, entitled "An act for the assessment of property and for the levy and return of taxes thereon," approved December, 21, 1872:

	Amount
First. Money on hand or in transit	$1,164
Second. Funds in the hands of other banks, bankers, brokers, and others, subject to draft	1,459
Third. The amount of checks, or other cash items, the amount thereof not being included in either of the preceding items	
Fourth. The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable and interest accrued but not due, and interest due and unpaid	322,368
Fifth. The amount of bonds and stocks of every kind, and shares of capital stock, of joint stock or other companies or corporations held as an investment or in any way representing assets	10,000
Sixth. All other property appertaining to said business, other than real estate (which real estate is to be listed and assessed as other similar property is listed and assessed). (See foot-note)	1,400

Seventh. The amount of all deposits made with them by other parties	410,893
Eighth. The amount of all accounts payable, other than current deposit accounts	
Ninth. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item	89,806
Tenth. United States 5-20 bonds and 4 per cent	12,600
Eleventh. Legal tenders	77,206
Twelfth. Asset stocks	

I, John C. S. Harrison, do solemnly swear that the above statement is true according to the best of my knowledge and belief.

(Signed) JOHN C. S. HARRISON.

Subscribed and sworn to before me this 23d day of April, 1879.

(Signed) Z. W. COFFIN,
Deputy Assessor.

Assessor's analysis preparatory to listing for taxation.

First item	$1,164	Fourth item	$322,368
Second item	1,459	Seventh item	$410,893
Third item		Eighth item	
Aggregate amount to be listed as moneys (No. 5 of schedule)	2,623	Aggregate of seventh and eighth (to be deducted from fourth)	
		Amount remaining (to be listed as credits) (No. 4 of schedule)	

Aggregate amount of fifth item	$10,000
Aggregate amount of ninth item, to be deducted from fifth item	89,806
Remainder to be listed as bonds and stocks	

Moneys, $2,623. Credits, $ Bonds and stocks, $

"

Total, $

NOTE TO ASSESSOR.—Item sixth, includes safes, office furniture, and all other personal property not herein enumerated, and should be distributed to the amount stated to items 31, 20, etc., of the regular schedule.

51 STATE OF INDIANA,
Marion County, ss:

I, W. A. Pfaff, auditor in and for said county, do hereby certify that the within is a true copy of the statement on file in my office.

Witness my hand and seal this 24th day of September, 1880.

[SEAL.] WM. A. PFAFF, *A. M. C.*

And thereupon said complainant offers in evidence a certified transcript of the duplicate entries for taxation for the county of Marion, for the year 1879, assessing for taxation severally and respectively the property of Woollen, Webb & Co., S. A. Fletcher & Co., Fletcher &

Sharpe, Indiana Banking Co., Central Bank, and A. & J. S C. Harrison.

And thereupon respondents objected to the introduction of the same as irrelevant and immaterial and incompetent, for the reason that the paper and writing thereon in no way connects the respondent with the paper and writing thereon.

And thereupon said certified transcript is received in evidence, indorsed by the examiner with his signature, as Exhibit H.

EXHIBIT H.

CITY OF INDIANAPOLIS.

Tax duplicate of Marion County, Indiana, for the year 1879.

Name of owners.	Number.	Description of lands and lots.	No. of in-lots.	No. of out lots.	No. lot or sq'e.	Value of lands and lots.	Value of improvements.	Value of personal property.	Total value of taxables.	First installment tax, 1879.	Sec. installment tax, 1879.
										$ cts.	$ cts.
Harrison, A. & J. C. S.	8328	34½ feet S. side	7	26		3,500	1,800			11 92	11 93
" "		Gibson's sub., Johnson's add	4	23		1,000	2,500			7 37	7 38
" "		W. & M. sub	15	10		900				2 04	2 02
" "		W. & M. sub	16	10a6		900	800			3 84	3 82
" "		Wright's sub., Johnson's add	16		26	400				90	90
" "		" " " "	32		26	400				90	90
" "		Ruadell's " " "	5		32	1,200				2 70	2 70
" "		" " " "	17		32	900				2 03	2 02
" "		Parker's sub., Butter's add	7			720	200			2 07	2 07
" "		" " " "	16			450	750			2 70	2 70
" "		" " " "	2			1,300				2 93	2 93
" "		" " " "	5			1,100				2 48	2 47
" "		18 7½ 12 feet W. side	3		69	7,650	2,800			23 51	23 51
" "		Parker's sub., Butter's add	11			720	1,300			4 54	4 55
" "		Kappe's & Frank's sub., Zeiser's add	3								
" "		" " " " 5 ft. W. side	2			450	700			2 59	2 59
" "		" " " " 56 ft. off S. end	1		57	16,800	18,000			78 30	78 30
" "		Parker's sub., Butter's add., except 15 ft. W. side	4			850				1 91	1 91
" "		" " " " " " " "	10			720	700	4,025	73,535	12 25	12 25
Total amount of taxes										$	330 90

STATE OF INDIANA,
Marion County, ss:

I, William A. Pfaff, auditor of said county, do hereby certify that the above and foregoing is a true and complete copy of the entries upon the tax duplicate of Indianapolis, in said county, for the year 1879, in which the property of the firms above named in said entries is entered for taxation respectively as the same appears of record in my office.

Given under my hand and seal of office, at Indianapolis, this 28th day of October, 1880.

[SEAL.]

WM. A. PFAFF,
Auditor Marion County.

CITY OF INDIANAPOLIS.

Tax duplicate of Marion County, Indiana, for the year 1879.

Name of owners.	Number.	Description of lands and lots.	No. of in lots.	No. of out lots.	No. blk or sq't e.	Value of lands and lots.	Value of improvements.	Value of lands, lots, and improvements.	Value of personal property.	Total value of taxables.	First installment of tax, 1879.	Second installment of tax, 1879.	Total amount of tax, 1879.	Total amount of taxes.
Woollen & Webb	22675	17½ feet W side	2	....	66	92,750	20,000	.....	.....	.....	$96 19	$96 19	$192 38	.....
" "	.....	A. & B. N. add	141	....	.....	1,200	.....	.....	.....	.....	2 70	2 70	5 40	.....
" "	.....	Frazer's sub., 40 feet, S. side	11	35	....	4,800	1,000	.....	.....	.....	13 05	13 05	26 10	.....
" "	.....	Ridenous's Highland home add	57	.....	.....	2,600	.....	52,350	4,695	57,045	16 42	16 42	32 84	$256 71
Fletcher, S. A. & Co	6358	Martin's sub., Henderson's add	2	.....	.....	850	.....	.....	.....	.....	1 91	1 91	.....	.....
" "	.....	" " " "	20	.....	.....	800	.....	.....	.....	.....	1 80	1 80	.....	.....
" "	.....	H. M. & Mc's sub., S. E. add	13	.....	12	300	.....	.....	.....	.....	68	67	.....	.....
" "	.....	" " " " W. ½	12	.....	12	150	100	.....	.....	.....	56	56	.....	.....
" "	.....	" " " " N. ½	2	.....	100	2,025	2,200	.....	.....	.....	9 51	9 51	.....	.....
" "	.....	Downie's sub	4	102	....	900	.....	.....	.....	.....	2 02	2 03	.....	.....
" "	.....	Myer's sub., A. E. Fletcher's 4th add	14	.....	.....	100	.....	.....	.....	.....	23	22	.....	.....
" "	.....	Cottrell's sub	.....	1	153	900	900	.....	.....	.....	4 05	4 05	.....	.....
" "	.....	Allen's sub., Henderson's add	19	.....	....	450	.....	.....	.....	.....	1 01	1 01	.....	.....
" "	.....	" " " S. ½	2	22	....	880	400	.....	.....	.....	2 87	2 88	.....	.....
" "	.....	Fatout's sub	3	169	.....	800	600	.....	.....	.....	3 15	3 15	.....	.....
" "	.....	E. L. Fletcher's sub., E. T. & S. K. F's add	63	.....	.....	400	.....	.....	.....	.....	90	90	.....	.....
" "	.....	Pratt's sub., S. ½	15	171	.....	2,800	1,400	.....	.....	.....	9 45	9 45	.....	.....
" "	.....	" "	3	15	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
" "	.....	" " 5 feet, S. side	2	15	....	.....	.....	.....	.....	.....	.....	.....	.....	.....
" "	.....	" " 2 feet, N. side	4	15	....	3,530	1,000	.....	.....	.....	10 20	10 20	.....	.....
" "	.....	Dougherty's sub	66	99	.....	600	.....	.....	.....	.....	1 35	1 35	.....	.....
" "	.....	" "	45	103	.....	750	400	.....	.....	.....	2 59	2 59	.....	.....
" "	.....	" " 36 11-12 ft., on Va. avenue	6	64	.....	6,000	7,000	.....	.....	.....	29 25	29 25	.....	.....
" "	.....	F. & R. add	47	.....	.....	250	.....	.....	43,450	.....	98 32	98 33	.....	350 72
~~Fletcher & Sharpe~~	6355	Pratt's sub	13	172	.....	5,700	1,500	.....	83,390	90,590	203 83	203 83	.....	407 66
Indiana Banking Co	10318	" "	.....	.....	.....	.....	.....	.....	94,645	.....	212 95	212 95	.....	425 90
Central Bank	3825	" "	.....	.....	.....	.....	.....	.....	7,355	.....	16 55	16 55	.....	33 10

53 UNITED STATES OF AMERICA,
District of Indiana, ss:

I, John Lenihan, jr., examiner and notary public, selected by the complainants and appointed by consent of the respondent as examiner to take the evidence in the above-entitled cause, do certify that the foregoing testimony embraced in the exhibits hereto attached was taken before me in all respects in pursuance to the notice hereto attached, at the office of Asa & J. E. Iglehart, in Evansville, on the 29th day of October, A. D. 1880, between nine a. m. and six p. m., the taking of said testimony having been adjourned from day to day by consent of counsel for both parties.

I further certify that Col. J. S. Buchanan appeared at the taking of said evidence in behalf of the respondent.

Given under my hand and seal, this 29th day of October, A. D., 1880.

[SEAL.] JOHN LENIHAN, JR.,
Examiner and Notary Public.

Received five dollars for fees as examiner and notary public; paid by complainant. Cost of transcripts, twenty dollars; paid by complainant.

JOHN LENIHAN, JR.,
Examiner and Notary Public.

DEFENDANT'S EVIDENCE.

We hereby agree and consent to take depositions before John Lenihan, jr., notary public, and waive notice of the same, this 10th day of December, A. D. 1880.

ASA & J. E. IGLEHART AND
GILCHRIST & BUTTERFIELD,
Attorneys for Complainant.

54 Depositions of William Warren, Albert A. Swope, and Samuel G. Evans, witnesses, taken before me, John Lenihan, jr., notary public, in and for Vanderburgh County, Indiana, on behalf of the defendant in a certain action now pending in the circuit court of the United States for the district of Indiana, wherein The Evansville National Bank, of Evansville, Indiana, is plaintiff, and Thomas P. Britton is defendant, said plaintiff, by counsel, waiving notice of the same, as appears by their written consent and agreement herein.

FRIDAY, *December 10th*, 1880.

WILLIAM WARREN, being by me first duly sworn according to law, deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. William Warren; age, 37 years; Evansville, Indiana; occupation, county auditor.

Q. How long have you been auditor of Vanderburgh County, Indiana.

A. Two years.

Q. What was your business previous to your election as auditor?

A. I served two terms at the treasury of Vanderburgh County as treasurer, from October, 1871, to October, 1875.

Q. State whether you were a member of the board of equalization of Vanderburgh County, Indiana, during the year 1879; and if so, when and where did the board meet, and in what capacity did you act?

A. Was a member; board met at the court-house of Evansville, In-

diana, on the first Monday of June, 1879, as provided in section 150 assessment law. The board organized by electing George Peva as president and William Warren as clerk.

(Question and answer objected to as incompetent.)

55 Look at the paper now handed you; state what it is, and under what circumstances it came into your possession?

A. It is the return of the Evansville National Bank, as required in section 62 to 64, except the indorsement on the back, "assessed at $105, July 11th, 1879," which was made at said date, by order of said board.

(The question and answer objected to by counsel for complainant, as immaterial and the answer objected to as not being responsive to the question, and as containing matter which is incompetent.)

Q. Will you please make a certified copy of this return a part of your deposition, marked Exhibit A?

A. I now file a copy of the paper above referred to and make it a part of my deposition, as Exhibit A.

EXHIBIT A.

Statement of Henry Reis, cashier of the Evansville National Bank, in Evansville, county of Vanderburgh, giving a correct list of the names and residences of the stockholders in the said bank, and the number of shares held by each one of said stockholders, and the value thereof, on the first day of April, 187 :

Name of stockholders.	Residence.	No. of shares.	Par value of each share.	Estim'd cash v of each sh'e.
Sam'l M. Archer	Evansville, Inde	300	$100	$100
David Archer	Princeton "	50	100	100
Francis Amory	Boston, Mass	200	100	100
T. S. Anderson, trustee	Owensboro, Ky	15	100	100
Alice Bayard	Vincennes Ind	50	100	100
Sam'l Bayard	Evansville "	350	100	100
Jos. H. Brandis	Vanderburgh Co. "	126	100	100
Henry F. Blount	Evansville "	140	100	100
Sam'l Bayard, agent	do "	45	100	100
Mattie J. Bayard	do "	80	100	100
Lucia E. Blount	do "	80	100	100
Maria Bisbee	do "	5	100	100
Wm. Capelle	do "	40	100	100
Mary M. Casselberry	do "	90	100	100
Manuel Cronbach	Mt. Vernon "	30	100	100
Benj. J. Day	Evansville "	35	100	100
Mathew Dalzell	do "	135	100	100
Mary Belle Darley	do "	10	100	100
Wm. Dean	do "	40	100	100
Robt. K. Dunkerson	do "	150	100	100
Sarah E. De Bruler	do "	38	100	100
Azro Dyer	do "	30	100	100
Sam'l G. Evans	do "	8	100	100
Anna L. Evans	do "	12	100	100
Cornelia M. Garvin	do "	60	100	100
John Gilbert	do "	100	100	100
Thos. E. Garvin	do "	53	100	100
Mary Gardiner	do "	30	100	100
James Hammond	Dale "	40	100	100
Wm. Heilman	Evansville "	250	100	100
Ann Howe	Princeton "	45	100	100
Henry W. Hess	Evansville "	20	100	100
Mathew Henning	do "	10	100	100
Adam Jenner	do "	24	100	100
Jacob W. Jenner	do "	14	100	100
Amelia J. Kumler	do "	40	100	100
Koester & Korff	do "	30	100	100
DeWitt C. Keller	Frederick, Md	120	100	100
Robt. H. Kellogg	Evansville, Ind	10	100	100
Isaac Keene	do "	5	100	100
Chas. H. Kellogg	do "	34	100	100
Sarah Law	do "	50	100	100
Mac elaine F. Laughlin	do "	18	100	100

56 EXHIBIT A—Continued.

Name of stockholders.	Residence.	No. of shares.	Par value of each share.	Estima'd cash v. of each sh e.
Jas. F. D. Lanier	New York, N. Y	300	$100	$100
Sarah A. Litchtenberger	New Harmony, Ind	5	100	100
Anna Grace Lowery (Gillett)	Evansville, "	240	100	100
Evaline E. McCallister	Mt. Vernon, "	60	100	100
Mary W. Maidlow	Evansville, "	15	100	100
Emma S. Maidlow	do "	165	100	100
Mary M. Mauck	Princeton, "	50	100	100
David J. Mackey	Evansville, "	733	100	100
Henry Maidlow	Inglefield, "	5	100	100
Edward Murphy	New Harmony, "	310	100	100
Emerson B. Morgan	Evansville, "	2	100	100
Isanre Nettelton	Cincinnati, O	200	100	100
Caroline Nitzer	Evansville, Ind	10	100	100
Sam'l Orr	do "	200	100	100
James L. Orr	do "	50	100	100
Martha Orr	do "	30	100	100
Owensboro Savings Bank	Owensboro, Ky	15	100	100
Rich'd M. Parrett	Vanderburgh Co., Ind	50	100	100
Jno. W. Parrett	do "	35	100	100
Wm. F. Parrett	Evansville, "	17	100	100
Alex. H. Pettit	Princeton, "	40	100	100
Ab'm Phelps	Newburgh, "	130	100	100
Rebecca Preston	New York, N. Y	300	100	100
John D. Preston	Evansville, Ind	135	100	100
Henry A. Perkins	Hartford, Conn	100	100	100
John G. Potts	Vanderburgh Co., Ind	115	100	100
Sallie M. Pratt	Madisonville, Ky	50	100	100
Cypian Preston	Evansville, Ind	500	100	100
Clifton J. Pratt	Madisonville, Ky	7	100	100
Chas. A. Parke	Mt. Vernon, Ind	30	100	100
Nina Dale Parke	do "	20	100	100
Fred. A. Preston	Evansville, "	61	100	100
Anthony Reis	do "	120	100	100
Henry Reis	do "	10	100	100
Geo. W. Rathbone	New York, N. Y	400	100	100
Marianne Rose	Evansville, Ind	16	100	100
Silias S. Scantlin	do "	15	100	100
James Swanson	do "	115	100	100
Lizzie Shanklin	do "	35	100	100
Rob't F. Shanklin	do "	15	100	100
Harvey Seymour	do "	57	100	100
Leroy Swarmstedt	St. Mary's Point, La	75	100	100
Victoria Vaudegrift	New Harmony, Ind	15	100	100
Angeline Vaudegrift	do "	20	100	100
Frances Jane Vaudegrift	do "	10	100	100
Mary Ellen White	Evansville, "	5	100	100
Merritt A. Weir	New Albany, "	20	100	100
Marcus Sherwood	Evansville, "	90	100	100
Entire capital stock		8,000	800,000	800,000

57 I, Henry Reis, cashier of the Evansville National Bank of Evansville, Indiana, solemnly swear that the foregoing is a true and complete statement of the names and residences of stockholders, the number of shares, and value thereof in the said bank, on the first day of April, 1879.

HENRY REIS,
Cashier the Evansville National Bank.

STATE OF INDIANA,
Vanderburgh County, ss:

I, Will Warren, auditor, certify the within to be a true copy of the original on file in my office.

Witness my hand and the seal of the board of commissioners of said county this 7th day of December, 1880.

[SEAL.] WILL WARREN, *A. V. Co.*

Q. Look at the paper now shown you; state what it is, and under what circumstances it came into your possession.

A. That is the return of the assessor of Pigeon Township of the shares of the capital stock of the Evansville National Bank, and filed in my office June 2d, 1879, as provided in sections 59 to 64 and section 118, assessment law; it is a part of the files of my office.

Q. Please make a certified copy of said return a part of your deposition, and have it marked Exhibit B.

A. I now file a certified copy of said paper, and mark it Exhibit B, except the indorsement, "reduced $40,000," which indorsement was made by me at said date by order of said board.

(The counsel for complainant objects to the answer for incompetency in whole or in part.)

58 EXHIBIT B.

Schedule of credits, stocks, and other personal property of Pigeon Township, Vanderburgh County, Ind., held by Evansville National Bank on the first day of April, 1879.

8,000 shares, at $110 per share	$880,000
Less real estate	28,450
	$851,550

JOSEPH PRINCE.

STATE OF INDIANA,
Vanderburgh County, ss:

I, Will Warren, auditor, certify the within to be a true copy of the original now on file in my office.

Witness my hand and seal of the board of commissioners of Vanderburgh County this 9th day of December, 1880.

[SEAL.] WILL WARREN, A., V. C.

Q. State if you were present, as a member of the board of equalization, at the time the shares of the Evansville National Bank were assessed and valued by said board for taxation in June and July, 1879.

A. I was.

Q. State when that board convened and when it adjourned.

A. It convened June 2d, 1879, and adjourned July 11th, 1879.

Q. State how the valuation and assessment of the shares of the Evansville National Bank were, during said meeting, made by said board.

A. The assessor of Pigeon Township had returned the Evansville National Bank at a hundred and ten dollars per share. The question of bank taxation coming before the board, the matter was
59 thoroughly discussed, and, after getting all the information bearing on the value of bank stock, by examination of witnesses and reports, the board concluded the market value of the shares of the Evansville National Bank to be $125 per share. It was, on motion, assessed at $105 per share, to conform, as near as possible, to the assessed value of other personal property in Vanderburgh County.

(Question and answer objected to by solicitor for complainant as incompetent.)

Q. At the time of said valuation and assessment of the shares of stock of the Evansville National Bank, what was the fair cash value of each of said shares at Evansville, Indiana?

(Question objected to by solicitor for complainant for incompetency.)

A. $125 per share of $100.

Q. Please look at the paper now shown you and state what it is and make it a part of your deposition, marked Exhibit C.

STATE OF INDIANA,
Vanderburgh County, ss:

JULY 11, 1879, *Friday morning.*

Board of equalization of said county met pursuant to adjournment at the court-house, in Evansville, Indiana, at ten o'clock a. m., when present A. A. Swope, J. Bennighof, and George Peva, commissioners; Will Warren, auditor, and the following township assessors: Prince, Heldt, TePoll, Newman, Kamp, McCutchan, and Bauer.

Among other business transacted, it was, on motion, ordered that the Evansville National Bank be reduced in the sum of $40,000, being a reduction as returned by the assessor of from $110 per share of stock to $105 per share of stock.

I, Will Warren, auditor, certify the above to be a true record of the order of the board of equalization in regard to the reduction of
60 assessment of said bank stock.

Witness my hand and seal this Dec. 9th, 1880.

[SEAL.] WILL WARREN, A., V. C.

A. It is a certified copy of the record of the board of equalization of said county, of July 11, 1879, when the shares of the Evansville National Bank were reduced from a hundred and ten dollars, as returned by the assessor to one hundred and five dollars per share, as ordered by the board at said date. I now file it as a part of my deposition, marked Exhibit C.

(Question and answer objected to as being incompetent.)

Q. State how and why it is that the value of real estate and personal property of the Evansville National Bank appears in different columns on the tax duplicate of Vanderburgh County for the year 1879, as shown by your certified copy of tax duplicate in this case, and why is the aggregate value of all the shares made in one entry upon the said duplicate.

(Question objected to for incompetency by solicitors for complainant.)

A. To conform to the forms of duplicates as provided by the State auditor in section 135. The taxables of the real estate and improvements of said bank were $28,450, carried in the column headed "Real estate and improvements." That amount taken from the aggregate of stock at $105 per share, $840,000, left $811,450, to be taken to the column headed "Personal property," and the two amounts, or $840,000, carried to the column headed "Total valuation of taxables."

(Answer objected to because it is more palpably incompetent, if possible, than the question.)

Q. State what difference, if any, the board of equalization
61 made in the valuation and assessment of the shares of the stock in the Evansville National Bank, and the valuation and assessment of the shares of stock in corporations organized under the laws of the State of Indiana valued and assessed at the same time?

(Question objected to for incompetency by solicitors for complainants.)

A. No difference. The board endeavored to assess all personal property of whatsoever kind in the county alike, and no discrimination was made against the stock of the Evansville National Bank or any other bank.

Q. State the manner in which the board of equalization arrived at the valuation and assessment of the shares of the Evansville National Bank, and the valuation and assessment of all other corporations then and there assessed. State fully.

(Question objected to by solicitor for complainants for incompetency.)

A. The board of equalization arrived at the value of all personal property assessed and valued for taxation by ascertaining its fair cash value as near as possible. And for this purpose they examined witnesses and records, and sent for persons and examined them under oath. We took the bank's own statements to the comptroller, examined persons supposed to be in position to know the value of bank stock, and with all these facts before them the board made the assessment as provided in section 150, and which was, in the case of the Evansville National Bank, as we all believed, nearly twenty per cent. (20 per cent.) below its real market-value at that time. I never bought or sold any of the stock of the Evansville National Bank.

(Answer objected to by solicitor for complainant.)

WILL WARREN.

The taking of these depositions is now adjourned until to-mor-
62 row, Saturday, the 11th day of December, 1880.

JOHN LENIHAN, JR.,
Notary Public.

SATURDAY, *December* 11*th*, 1880.

The taking of these depositions is now adjourned until Friday the 17th day of December, 1880.

JOHN LENIHAN, JR.,
Notary Public.

FRIDAY, *December* 17*th*, 1880.

Pursuant to adjournment, the taking of the depositions is now resumed.

JOHN LENIHAN, JR.,
Notary Public.

ALBERT A. SWOPE, being by me duly sworn according to law, deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. Albert A. Swope; age, thirty-seven; residence, Center Township, Vanderburgh County, Indiana; occupation, farmer and member of board of commissioners of Vanderburgh County.

Q. How long have you been a member of the board of commissioners of Vanderburgh County?

A. Four years.

Q. State whether you were a member of the board of equalization of Vanderburgh County, Indiana, at any time during the year 1879; and if so, where and when did the board meet?

A. I was a member of the board at that time; met in the court-house at Evansville, Indiana, on the first Monday in June, 1879.

Q. State if you were present as a member of the board of equalization of Vanderburgh County at the time the shares of Evansville National Bank stock were assessed and valued for taxation by said board at their session in 1879.

A. I was.

Q. State how the valuation and assessment of the shares of
63 the Evansville National Bank were at that time made by said board.

(Question objected to by solicitors for complainant for incompetency.)

A. Made just the same as the valuation of other property was made.

Q. At the time of said valuation and assessment of the shares of the Evansville National Bank, what was its fair cash value, if you know, per share?

(Question objected to by solicitor for complainant for incompetency.)

A. Well, from the best evidence we could get at that time, by examining witnesses and different parties, we came to the conclusion that the shares of the Evansville National Bank were worth $1.15, or $115 on the hundred.

Q. State what difference, if any, the board of equalization made in the manner of valuation and assessment of the shares of stock in the Evansville National Bank, and the valuation and assessment of the shares of stock in corporations organized under the laws of the State of Indiana.

(Question objected to by solicitors for complainant for incompetency.)

A. Well, at the time that assessment was made, we had a statement from all the banks, also from the Cotton Mill Association, gas company, Evansville Loan Association, and one or two others I don't remember, and we examined them all the same. After examining all the witnesses and all the evidence we could get, we assessed them just the same, at a fair cash value at that time.

A. A. SWOPE.

The taking of these depositions is now adjourned until Tuesday, December 21st, 1880.

JOHN LENIHAN, JR.,
Notary Public.

TUESDAY, *December 21st*, 1880.

64 Pursuant to adjournment, the taking of these depositions are now resumed.

JOHN LENIHAN, JR.,
Notary Public.

SAMUEL G. EVANS being by me first duly sworn according to law, deposes and says as follows, to wit:

Q. Please state your name, age, residence, and occupation.

A. Samuel G. Evans; Evansville, Indiana; age, forty years; occupation, merchant.

Q. How long have you been engaged in the mercantile business in the city of Evansville?

A. About fifteen years.

Q. State, if you know, what was the market value, in the city of Evansville, of the shares of the Evansville National Bank during the year 1876.

(Question objected to, because incompetent, for not specifying any particular date in 1879.)

A. Yes; I do; the shares were worth a hundred and fifteen ($115) dollars per share of $100.

Cross-examined:

Q. At what time in the year 1879 do you fix the value in your examination-in-chief; that is, at what particular date?

A. Couldn't fix any particular date; the latter part of the year.
Q. How do you know the value of the shares of said bank?
A. I was trying to sell some stock.
Q. Did you sell it?
A. I did.
Q. When did you sell it, and for what price, and how many shares?
A. Sold some either in the latter part of '78, or early part of '79; couldn't say which; and some in the latter part of '79, or early part of '80. I was paid from thirteen and one-half to sixteen per cent. premium. I don't know the number of shares sold.

65 Q. Whose shares did you sell and to whom did you sell them?
A. That question I couldn't answer until I had examined the books. I don't know in whose hands some of it was.
Q. State whether you sold any shares on or about the 1st of April, 1879.
A. I couldn't recollect the date. I sold some in the latter part of 1879, or spring of 1880.

SAMUEL G. EVANS.

STATE OF INDIANA,
County of Vanderburgh, ss:

I, John Lenihan, jr., a notary public in and for said county, do hereby certify that Wm. Warren, Albert A. Swope, and Samuel G. Evans, the above-named witnesses, were by me first duly sworn to tell the truth, the whole truth, and nothing but the truth according to law; that said depositions were reduced to writing by me and signed by the respective deponents after the same had been read over to them by me; that said depositions were taken before me and notice waived, by the written consent and agreement of solicitors for complainant as appears herein; that both plaintiff and defendant were present by attorney, at the taking of said depositions, which were taken at the law-office of H. A. Mattison, in the city of Evansville, in the county of Vanderburgh and State of Indiana, on the 10th, 17th, and 21st days of December, A. D. 1880.

In witness whereof I have hereunto set my hand and notarial seal, this 21st day of December, A. D. 1880.

[SEAL.] JOHN LENIHAN, JR.,
Notary Public.

Notary fees, $4, paid by defendants.

JOHN LENIHAN, JR.,
Notary Public.

66 *Complainant's evidence in rebuttal.*

We hereby consent and agree to take depositions before John Lenihan, jr., a notary public, to be taken on behalf of complainant in the case of the Evansville National Bank vs. Thomas P. Britton, in the circuit court of the United States for the district of Indiana, and waive notice of the same, this 27th day of December, A. D. 1880.

BUTTERFIELD & GILCHRIST AND
A. & J. E. IGLEHART,
Solicitors for Plaintiff.
J. S. BUCHANAN AND
H. A. MATTISON,
Solicitors for Defendant.

Deposition of S. P. Gillett, taken before me, a notary public in and for Vanderburgh County, State of Indiana, on behalf of complainant in a certain case now pending in the circuit court of the United States for the district of Indiana, wherein the Evansville National Bank, is plaintiff and Thomas P. Britton defendant, pursuant to the foregoing agreement.

Deposition of SIMEON P. GILLERT, who being by me first duly sworn according to law, deposes and says, as follows:

Q. Please state your name, age, residence, and occupation.

A. Simeon P. Gillett; age, forty years; residence, Evansville, Indiana; am cashier of the Citizens' National Bank of Evansville, Indiana.

Q. How long have you been engaged in banking in the city of Evansville?

A. Since July 1, 1872.

Q. State, if you know, the value of the shares of the Evansville National Bank about the 1st of April, 1879.

67 A. The actual value of the stock I had no means of knowing except by hearsay. As to the market value, the best and only offer I could get for seventy-five shares of the stock was $108 per share, at which I sold the seventy-five shares about the 17th of April, 1879.

Q. State whether the effort to sell and the negotiation for sale extended as far back as the 1st of April, and if yea, whether the shares would have brought a higher price than you obtained between the 1st day of April and the date of your transfer.

A. Yes, sir; and before the 1st of April. I couldn't learn of it if there were a higher price. I hunted for it very hard.

Cross-examined:

Q. To whom did you sell the shares of stock of the Evansville National Bank?

A. I do not know to whom the shares of stock were assigned, except that I understood they were sold to Mr. Bayard for several residents of the city.

Q. What Mr. Bayard?

A. Samuel Bayard.

Q. Was Samuel Bayard at that time president of the Evansville National Bank?

A. He was.

Q. State, if you know, of any other sales of Evansville National Bank stock in the year 1879.

A. I don't remember any. I can't recall any.

S. P. GILLETT.

STATE OF INDIANA,
County of Vanderburgh, ss:

I, John Lenihan, jr., a notary public in and for said county, do hereby certify that Simeon P. Gillett, the above-named witness, was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth according to law; that said deposition was written by me and subscribed by the said deponent after the same had been

68 carefully read over to him; that said defendant was present, by attorney, and that said depositions were taken before me by the written agreement of counsel for the respective parties, as appears herein, at the law-office of Asa & J. E. Iglehart, in the city of Evansville, Indiana, on the 27th day of December, 1880.

Witness my hand and notarial seal this 27th day of December, A. D. 1880.

JOHN LENIHAN, JR.,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 25th day of October, 1881, before the honorable Thomas Drummond, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by its solicitors, Asa and J. E. Iglehart and Gilchrist and Butterfield, and the defendant, by his solicitors, H. A. Mattison and Buchanan, Gooding and Buchanan, and by leave of court the complainant files its supplemental bill, and stipulates that as to all the matters and things contained therein, excepting the allegation that the defendant had advertized the property of the complainant for sale for the satisfaction of the taxes mentioned in the original bill, said supplemental bill shall be taken as denied, and as to said allegation the same is now here admitted, and by agreement of parties this case comes on to be heard upon the bill, answer, replication, and exhibits, and said supplemental bill and the evidence
69 as it now appears in the case, and the court having heard the evidence and arguments of counsel, and all things touching the same having been fully heard and considered, the court finds that as to the relief prayed in enjoining the defendant from the sale of the property of the complainant for the satisfaction of the taxes mentioned in the bill, the equity of the case is with the complainant, and that as to the relief prayed in enjoining the collection of the taxes assessed for the year 1879 upon the shares of the complainant so far as it applies to the shares owned by Samuel Bayard, David J. Mackey, John G. Preston, and Fred A. Preston the equity is with the complainant, but so far as it relates to the shares owned by all the other stockholders the equity is with the defendant.

It is therefore ordered, adjudged, and decreed that the defendant be enjoined and forever inhibited from enforcing the payment of said taxes upon the shares of complainant's bank by the sale of the complainant's property, or any part thereof.

It is further ordered, adjudged, and decreed that said defendant be enjoined and forever inhibited from collecting or *insisting* [*instituting] or prosecuting any proceedings to collect said taxes assessed upon
70 the shares of the complainant's stock for the year 1879, so owned and held by said Samuel Bayard, David J. Mackey, John D. Preston, and Fred A. Preston.

And it is further ordered, adjudged, and decreed that, as to that part of the complainant's bill which seeks to enjoin the collection of the taxes for the year 1879 upon the shares of all stockholders other than those above named, the same be, and is hereby, dismissed.

It is further ordered, adjudged, and decreed that said defendant pay the costs of this suit.

And said complainant now here prays an appeal to the Supreme Court from that part of the decree whereby said portion of said bill is dismissed; which is granted, and said complainant may execute its bond in the penal sum of two hundred and fifty dollars, conditioned for the payment of the costs of said appeal, with Samuel Bayard as surety, which is now here filed and approved by the court; and said defendant now here prays an appeal to the Supreme Court from that

* In pencil on original.

part of the decree enjoining the sale of said complainant's property for the payment of said taxes, and also from that part of the decree enjoining the collection of said taxes assessed upon the shares of said
71 Bayard, Mackey, John D. and Fred A. Preston, for the year 1879, which is granted and the defendant may execute his bond conditioned for the payment of the costs of said appeal in the penal sum of two hundred and fifty dollars, with Albert A. Swope as surety, which is now here filed and approved by the court.

And said supplemental bill mentioned in said decree is in the words following:

To the hon. the judges of said court:

The said complainant brings this his supplemental bill of complaint, and humbly complaining, showeth unto your honors that heretofore, to wit, prior to the 7th day of February, 1881, and since the filing of the original bill herein, pretending that the said tax mentioned in the original bill is and was properly charged against your orator in its corporate capacity, and a charge and a lien upon the property of your orator, said defendant did before the 7th day of February, 1881, aforesaid, advertise for sale, in the Evansville Argus, or by handbill, according to law, that on the second Monday of February, 1881, he would sell the real estate of your orator for the satisfaction of the taxes assessed and charged against your orator, for the whole of the shares of capital stock belonging to all the shareholders of your orator,
72 and charged against your orators, as in said original bill alleged. And because said tax was levied, assessed, and entered upon the duplicate of said county of Vanderburgh against your orator, and not in any wise against its stockholders, or any of them, and believing that said defendant, if not enjoined, would sell said property, your orator did, upon affidavit and notice, move the court, before the district judge, for a temporary injunction. And thereupon, upon the day and year aforesaid, said district judge did enter an order and issue the court's writ of injunction against said defendant, inhibiting him from selling your orator's property for the satisfaction of said taxes, which said affidavit, order of injunction, writ, and notice are now on file in the papers, and reference thereto is now had, and a copy of said notice of said sale, of said threatened sale, in paper or handbill, is herewith filed and made part hereof.

Wherefore your orators pray that, upon the final hearing of this cause, said defendant may be perpetually enjoined from enforcing, or attempting to enforce, the payment of said taxes by sale of said real estate, or other property of your orator, and that your orator may have the relief prayed for in the original bill; and your orator will ever pray, &c.

73 THE EVANSVILLE NATIONAL BANK,
By ASA & J. E. IGLEHART &
GILCHRIST & BUTTERFIELD,
Solicitors for Complainant.

EXHIBIT.—*Evansville Argus.*

A list of lands and town lots returned and remaining delinquent for the non-payment of taxes for the year A. D. 1879, in Vanderburgh County, Indiana, with the penalty, interest, and charges thereon, together with the taxes for the current year, A. D. 1880.

* * * * * * *

1732. Evansville National Bank.

Original plan less 5 × 144, lot 35; value of lot and improvements, $16,000.00.

Chandler and Allis, sub. lot 4; value of lot and improvements, $2,900.00.

Lot 5; value of lot, $2,800.00.

Lot 6; value of lot, $1,400; value of personal property, $761,900.00.

Total value of taxables, $785,000.00; total taxes now due, $22,083.36.

* * * * * * *

NOTICE.—The whole of the several tracts of land and town lots in the foregoing list contained, or so much as may be necessary to discharge the taxes, interest, penalties, and costs due thereon, or due from the owners at the time of sale, will be sold by the county treasurer, at the court-house in the city of Evansville, in said county, on the second Monday in February, A. D. 1881 (it being the 14th day of said month), unless redeemed before the day of sale.

WILL WARREN, JR.,
Auditor of Vanderburgh County.

EVANSVILLE, IND., *January* 15, 1881.

74 *Stipulation.*

It is agreed by and between the parties to the within-entitled suit as follows:

* * * * * * *

3d. Both parties having appealed, the complainant may obtain the transcript and docket the appeal in the Supreme Court as the appeal of complainant, and the defendant may assign cross-errors, and the whole case may be heard and determined on the one appeal. Expense of transcript to be equally shared, to abide final decision.

GILCHRIST & BUTTERFIELD,
A. & J. E. IGLEHART,
For Complainants.
MATTISON & BUCHANAN,
For Def't.

75 UNITED STATES OF AMERICA,
District of Indiana, ss:

I, Noble C. Butler, clerk of the circuit court of the United States within and for said district, do herby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of the Evansville National Bank, of Evansville Indiana, against Thomas P. Britton, treasurer of Vanderburgh County, as fully as the same remains upon the records now in my office.

Witness my hand and the seal of said court at Indianapolis, in said district, this 2d day of November, 1881.

[SEAL.] NOBLE C. BUTLER, *Clerk.*

(Indorsement on cover:) No. 1149. The Evansville National Bank, of Evansville, Indiana, appellant, vs. Thomas P. Britton, treasurer of Vanderburgh County. Filed 15th November, 1881; and No. 1156 (cross-appeal). Thomas P. Britton, of Vanderburgh County, appellant, vs. the Evansville National Bank, treasurer of Evansville, Indiana. Filed 21st November, 1881. Indiana C. C. U. S.

In the Supreme Court of the United States.

No. 1149.

THE EVANSVILLE NATIONAL BANK,
Of Evansville, Indiana, Appellant,
VS.
THOMAS P. BRITTON,
Appellee.

No. 1156.

THOMAS P. BRITTON,
Appellant,
VS.
THE EVANSVILLE NATIONAL BANK,
Of Evansville, Indiana, Appellee.

BRIEF OF

ALEX GILCHRIST, CHARLES H. BUTTERFIELD, ASA IGLEHART and J. E IGLEHART

Counsel for The Evansville National Bank.

A. C. Isaacs, Law and Brief Printers, Evansille, Indiana.

In the Supreme Court of the United States,

No. 1149.

THE EVANSVILLE NATIONAL BANK,
Of Evansville, Indiana, Appellant,

VS.

THOMAS P. BRITTON,
Appellee.

No. 1156.

THOMAS P. BRITTON,
Appellant,

VS.

THE EVANSVILLE NATIONAL BANK,
Of Evansville, Indiana, Appellee

ABSTRACT.

This was a bill in chancery to enjoin the collection of the State, county, road and school tax, levied, assessed and charged against Bank and its shareholders upon their shares for the year 1879.

The allegations contained in the bill are about to the following effect :

That defendant is Treasurer of Vanderburgh county, and charged with the collection of the State and county revenue

That the complainant is a Banking Association, organized under the National Currency Act, approved June 4, 1864, in January, 1865 ; that it has been located in said county ever since ;

that it has a capital stock of $800,000 divided into 8,000 shares, owned by eighty-five stockholders resident in Evansville, New York and elsewhere. That by an act of the Indiana Legislature, passed in 1872, which is still in force, the shares of capital stock of any National Bank, are to be assessed to the owners, and taxed at the same rate, and for the same purposes as other personal property in the locality, without deduction; that by said law the real and tangible personal property of said bank, embracing complainant's real estate, worth $28,000, is taxed for its cash value; that no deduction can be made for said real property. That by said statute the moneyed capital of individual citizens of said State, invested in the capital stock and shares thereof of any corporation or association created under the laws of said State, the tangible property of which is assessed, is exempt from assessment and taxation; that by said statute there is a discrimination against moneyed capital invested in National Banks, and that invested in other corporations and associations, or otherwise.

That by said statute all citizens are required to have assessed, at their cash value, all moneys at interest in or out of the State, and all demands against persons or bodies corporate, deducting their *bona fide* indebtedness, the tax being levied on the remainder of said credits; that millions of dollars, in said county and State, sums larger than all the banking capital therein are invested in such credits and demands, and a large number of the holders are largely indebted, and thereby obtain exemption from large sums in taxes. That such credits and moneys at interest form the larger part, if not almost the sole moneyed taxable capital held by citizens of said county and State, besides bank shares, whereby the holders of complainant's capital stock are compelled to pay a higher tax than do the citizens whose money is invested in such credits

and money at interest.

That sundry of complainant's shareholders are largely indebted, and are not permitted to deduct said indebtedness from the value of their shares, which are assessed at their full cash value, and they have no taxable credits from which said debts can be deducted.

That on the 1st day of April, 1879, $812,000 of complainant's means, represented by the shares held by complainant's shareholders, were invested in United States bonds held by the Comptroller of theCurrency, and $50,000 held as assets, and $64,000 legal tender notes, making in all $926,000, which are, by the constitution and laws of the United States, and by said State statute, exempt from taxation; and if said bonds and legal tenders were withdrawn, its shares would not be worth over $20 each. Said statute does not provide for the deduction from the shares of said National Bank for any sum so invested in such bonds or legal tenders; that by failure to make such provision, complainant's shares are taxed at a greater rate than the moneyed capital of other citizens other than National Banks; as the capital invested in all other corporations of said State, especially the State banks, of which twenty are organized, with a large capital of millions of dollars, whose capital stock is taxed by said statute, after deducting the amount invested in government bonds and legal tender notes. And the indebtedness of said banks, as well as many millions of dollars of moneyed capital employed by private bankers and banking associations are deducted in like manner.

That by the method of assessment and taxation pointed out by said statute, the shares of complainant's capital stock are valued higher than other moneyed capital in this: that the shares must be appraised at their fair cash value, and their tangible property, real and personal, is appraised separately, and the amount cannot be deducted from the value

of shares, whereas, the shares of all corporations, other than National Banks, are exempt to the extent of the value of their tangible property assessed for taxation. That the shares of National Banks, including complainant's, are taxed at their fair cash value, the shareholder not being permitted to deduct from such value his indebtedness, while the citizens having moneyed capital invested in money at interest, or demands on persons or corporations, as well as State Banks, are permitted to deduct their debts from the value thereof, and pay taxes upon the net balance. No provision is made by said statute to deduct from said valuation the value of their said United States bonds or legal tender notes, which are exempt from taxation, and which represent more than eighty per cent. of the value of said shares. Whereas, the moneyed capital of other citizens, invested in said bonds, or legal tender notes, or both, is, by said State law and the federal laws and constitution, exempt from taxation to the value of said bonds.

That said State statute is in conflict with the act of Congress, and is void.

That near the 1st day of May, 1879, the County Auditor furnished to the complainant's cashier a blank report, and demanded that the same be filled, signed, sworn to, and delivered to him, which was done; that it contained the names and residences of all of complainant's shareholders, number of shares held by each, the *par* value thereof, amounting to $800,000, or $100 per share, and the fair cash value thereof, amounting to $800,000, or $100 per share, *and the cash value of the stock.* That the Board of Equalization of said county appraised and assessed the shares at $101 43¼ per share, or $811,550 for the whole; that the Auditor placed said valuation upon the assessment roll and tax duplicate in the column marked "personal property." That the Auditor placed upon said assessment

roll and tax duplicate the value of complainant's real estate, appraised at $28,450; added thereto the valuation of said shares, making in all extended in the total column, $840,000.

That the Board of Commissioners having made the proper levy of taxes upon all real and personal property in said county, at $1 22 per hundred dollars, the Auditor extended and charged said aggregate per cent., making in all $10,248; whereby, under said statute, said shareholders are charged with said tax in the proportion of $1 23¾ per share, in the aggregate sum of $9,900 91, assessed upon the shares of complainant's capital stock. That complainant was properly charged, upon said duplicate for real estate, $347 09, which it paid.

That the Auditor, after entering and charging said tax to complainant, and completing the said duplicate, delivered the same to the defendant, then and now the Treasurer of said county, and who was and is authorized to collect the taxes placed upon said duplicate; that said taxes are due and payable before the third Monday in April, 1880, and if not paid by that time will be subject to a penalty of 10 per cent., and that such taxes are payable by the owners of said shares. That for the better security of the payment of said taxes they are made a lien upon such shares, and the lien relates back to the 1st of April, 1879, and takes precedence of all transfers.

It is the duty of complainant by said statute to retain so much of any dividend as may be necessary to pay said taxes.

That said defendant is threatening to collect from said complainant or its shareholders, said $10,284 of taxes, and if not restrained will proceed to collect the same by distress and sale of the property of said shareholders or of the complainant. That complainant offered and paid the $347 09, tax against its real estate. That the sum of $9,900 91 tax for the

reasons already set forth is illegal.

That it has become a usage between the complainant and said shareholders for complainant to pay the taxes charged against said shares and deduct the same from the dividends accruing to said shareholders. That a large number of said shareholders have refused to pay said taxes or to permit the complainant to pay them.

The complainant by reason of the premises will suffer a multiplicity of suits from said shareholders, for its refusal to pay said dividends, and therefore, be mulcted in excessive costs, and will suffer irreparable injury in its business; that said illegal mode of assessment has already damaged the property of the complainant $10,000.

That unless said State law is declared illegal and the authorities restrained from enforcing it, complainant will be greatly subjected to the suits above set forth, and its funds arising from dividends seized by the defendant.

Complainant prays, that until the final hearing, defendant may be enjoined from the collection of said taxes; that upon the final hearing said State statute may be declared illegal, and that defendant may be perpetually enjoined from the collection of said taxes.

The theory of this bill is: That the State and county taxes of 1879, are illegal, because the statute law under which they are assessed contains provisions necessary to their assessment and collection which are inimical to the act of Congress which contains the only authority under which the taxes can be levied and collected.

The grounds relied upon for relief were the following:

1. The State law, if indeed it does not impose a tax upon the *stock*, and not the shares, as interpreted and enforced by the tax officers, imposes a tax upon the shares to their full value, and also imposes a tax

upon the real estate without deduction, whereby, to the extent of the value of the real estate, a double tax is imposed. While the banks organized under the State laws, and all other corporations whose shares are taxed, as well as bankers and brokers, are permitted, by the provisions of the statute, to deduct the value of the real estate from the value of the capital stock upon which the tax is levied

2. By the same statute, as interpreted and enforced by said tax officers, the value of both United States bonds and legal tenders held by them are deducted from the sums upon which all corporations including State Banks, as well as bankers and brokers, are taxed upon their capital stock; and these bonds and legal tenders are not taxed in the hands of individuals, while no exemption is made for either in the taxation of the complainant, although nearly the whole of its capital stock, of which such shares are the representative, is invested in these bonds and legal tenders.

3. Under the State law, as interpreted and enforced by said officers, individuals and State banks, bankers and brokers may deduct their debts from the amount and value of their credits and money at interest, as well as from all claims due from individuals or corporations, which embraces a large amount of the moneyed capital upon which taxes are levied and collected in this State. But that National bank shares are taxed without deductions, no provision being made for any such deduction under the statute.

Each of these three grounds assume discriminations in the State statute against bank shares, and in favor of "other moneyed capital in the hands of citizens" under the act of Congress. (Pr. Rec pp 1-7)

The supplemental bill alleges that the Treasurer has advertised the complainant's real estate for sale for the payment of the taxes assessed upon the shares, and has been enjoined; exhibiting the adver-

tisement and writ of injunction. (B Rec p. 47)

THE ANSWER.

The answer admits the organization, location and continuance of the bank, admits that the State law for the taxation of the shares of National banks is as stated in the bill, but denies that the real and tangible personal property of such banks is taxed, and no deduction made therefor from the value of the shares, and the allegations of the bill in reference to the taxation of the property of State corporations, and avers that they are taxed in the same manner as the property of National banks, stating in detail the provisions of the State law; denies that there is any discrimination against National banks, and denies that the complainant's shares are taxed above their fair cash value, averring at the same time that the shares of complainant's bank, including real estate, are not appraised at a sum equal to their cash value. The answer also admits that by the terms of the law of the State, the indebtedness of the tax-payer may be deducted from the taxable credits of such tax-payer, but avers that such debts cannot under such law be deducted from money loaned or at interest, and further, that such taxable credits are not moneyed capital within the meaning of the act of Congress. The answer also denies knowledge of the allegations of the bill concerning capital of complainants', and the manner in which the same is invested. It admits that no deduction can be made from the value of the shares in the hands of the holder for the debts of such holder, but alleges that the act is not, therefore, in conflict with the act of Congress. The answer also admits the report of the banks and the action of the Auditor, Board of Equalization, and Board of County Commissioners, the assessment and levy of taxes upon the shares of the complainant as alleged in the bill.

and the threat of the defendant to collect the taxes by distress and sale, alleging that the appraisement of shares, including real estate, to be less than the fair cash value thereof (Pr. Rec. p. 7)

To this answer a general (Pr. Rec. p. 8)

REPLICATION

was filed. The principal points of the

EVIDENCE

so far as material here, are:

In behalf of the complainant; that the capital of complainant's bank, or a sum more than equal thereto, on the 1st of April, 1879, was invested in United States bonds and legal tender notes; that Samuel Bayard was, on the last named day, one of the shareholders of the complainant, owning three hundred and fifty shares of one hundred dollars each, and was indebted in the sum of fifteen thousand dollars, and had no taxable credits from which said indebtedness were or could be deducted; that Fred. A. Preston was on the last named day one of the shareholders of the complainant, owning sixty-five shares of one hundred dollars each, and was indebted in the sum of three thousand dollars, and had no taxable credits from which said indebtedness were or could be deducted; that John D. Preston was on the last named day one of the shareholders of the complainant, owning one hundred and thirty-five shares of one hundred dollars each, and was indebted in the sum of three thousand five hundred dollars, and had no taxable credits from which said indebtedness was or could be deducted; that David J. Mackey was on the last named day one of the shareholders of the complainant, owning seven hundred and thirty shares of one hundred dollars each, and was indebted in the sum of thirty-five thousand dollars, and had no taxable credits from which said indebtedness was or

could be deducted. (Rec. p. 14 – 31)

The complainant further proved the manner in which the assessment was made; that upon the tax duplicate the real property and the value of the shares as personalty were entered and levied against the complainant directly. (Rec. p. 23) The testimony further showed that complainant had paid its taxes upon its real estate, and that its shares at the date above stated were $108 a share, about three dollars more than the amount at which they were appraised. The complainant, for the purpose of illustrating the manner in which the statute operated under the administration of the tax officers, put in evidence the transcripts of the assessment rolls and duplicates of the private bankers in Indianapolis, in Marion county, whereby it appears that two millions and a half of moneyed capital in the form of bills receivable, and other taxable credits are covered by debts of the tax-payer for that amount, thereby withdrawing that sum from the burdens of taxation for State purposes in a single county. (Rec. pp. 25—33.) Complainant also proved by Bayard that more than a majority in amount of the stockholders of the Bank refused to pay taxes, and directed the board to enjoin their payment for the year 1879. (Rec. p. 44.)

The defendant's evidence consists mainly in transcripts of tax records and testimony tending to show the manner in which the assessment and entry for taxation by the county authorities was affected upon the shares of complainant's bank, and the proof that the shares, at the time in controversy, were worth from $110 to $125 a share.

Upon the hearing before

MR. JUSTICE HARLAN,

at the Circuit, a decree was rendered wherein the following points were adjudicated:

1. That the defendant be perpetually enjoined

from collecting the taxes for the year 1879, upon the shares of complainant's stock by levy and sale of complainants property.

2. That the defendant be perpetually enjoined from collecting taxes upon the shares of Bayard, Mackey and the Prestons, by any means.

3. That the defendants pay the costs.

4. That the complainant's bill as to all the other relief prayed be dismissed.

From the first three of these adjudications the defendant appeals; and from the *fourth* the complainant appeals. (Pr. Rec. p. 46).

And the said complainant for

ASSIGNMENT OF ERROR

upon said ruling and adjudication of said Circuit Court says: The Court thus dismissed complainant's bill as to part of the relief sought, and refused the relief prayed in said bill, to-wit: a perpetual injunction against said defendant from the collection of the taxes levied against all the shares of all the shareholders of said complainant, whereas, by the law of the land, said Circuit Court should have granted said relief, and so perpetually enjoined said defendant, and should not have thus dismissed said bill, wherefore appellant prays a reversal of this part of said decree.

In support of the decree of the Circuit Court, Mr. Justice Harlan delivered an opinion which is attached as an appendix to the brief in this case.

ABSTRACT OF STATUTES.

In order to understand the argument of these propositions fully, it will be convenient to have before us a copy of the section of the act of Congress, the violation of which is alleged, as well as copies of those sections of the State statute affecting the question. The law of Congress involved is the pro-

vision of the National bank law, concerning the taxation of the shares of National banks, which is thus expressed in §5,219 of the Revised Statutes:

"Nothing herein shall prevent all the shares in any Association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located, * * * subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any National banking association, owned by non-residents of any State, shall be taxed in the city or town where the bank is located, and not elsewhere."

The following sections of the taxation statute, now in force in Indiana, are more or less involved. (How personal property valued 1, R. S. 876 p. 74.)

SEC. 12. Personal property shall be valued as follows:

1. All personal property, except as herein otherwise directed, shall be valued at its fair cash value.

2. Every credit, for a sum certain, payable either in money or labor, shall be valued at a fair cash value for the sum so payable; if for any article of property, or for labor, or services, of any kind, it shall be valued at the current price of such property, labor or service.

3. Annuities and royalties, shall be valued at their then present total value.

4. The capital stock of all companies and associations now or hereafter created under the laws of this State, shall be so valued by the State Board of Equalization, as to ascertain and determine respectively, the fair cash value of such capital stock, including the franchise, over and above the assessad value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just; and such rules and principles, when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if it contained in this act, subject, however, to such change, alteration or amendment as may be found from time to time to be necessary by said board.

Provided, That in all cases where the tangible property or the capital stock of any such company or association is assessed under this act, the shares of capital stock of any such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this State.

(Real property, 75.)

SEC. 13. Real property shall be valued as follows:

1. Each tract or lot of real property, shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.

2. Taxable leasehold estates shall be valued at such a price as they would bring at a fair voluntary sale for cash.

3. When a building or structure is located on the right of way of any canal, railroad or other company leased or granted for a term of years to another, the same shall be valued at such price as such building or structure and lease or grant would sell at a fair, voluntary sale for cash.

4. In valuing any real property, on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair, voluntaay sale for cash.

(Personal property, how and by whom listed, p. 76.)

SEC. 15. All real and personal property, unless herein otherwise directed, shall be listed in the manner following:

1. Every person of full age and sound mind, not a married woman, being a resident of this State, shall list his real estate, and all tangible personal property, subject to taxation, situated and being in the county in which he resides.

2. He shall list all moneys, credits, bonds or stocks, shares of stock, of joint stock or other companies, (when the capital stock of such company is not assessed in this State,) moneys loaned or invested, annuities, franchises, royalties, whether in or out of such county.

3. He shall also list all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited, subject to his order, check or draft, and credits due from or owing by any person or [illegible] body corporate or politic.

4. The property of a minor child shall be listed by his guardian; if he have no guardian, then by the father, if living; if not by the mother, if living, and if neither father or mother be living, by the person having such property in charge.

5. The property of an idiot or lunatic by his conservator, or if he has no conservator, by the person having charge of such property.

6. The property of a wife, by her husband, if of sound mind; if not, by herself.

7. The property of a person for whose benefit it is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator.

And if such decedent die after the first day of April, without giving in the amount of his taxables, his administrator or executor shall give in the same as though such property had been in his possession on the first day of April.

8. The property of corporations, whose assets are in the hands of receivers, by such receivers.

9. The property of a body politic or corporate, by the president or proper agent or officer thereof.

10. The property of a firm or company, by a partner or agent thereof.

11. The property of manufacturers and others in the hands of agent, by and in the name of such agent, as merchandise.

(Listing personal property of banks, &c., p. 78.)

SEC. 24. The personal property of banks or bankers, brokers, stock-jobbers, insurance companies, hotels, livery stables, saloons, eating houses, merchants and manufacturers, ferries, mining companies, and companies not specially provided for in this act, shall be listed and assessed in the county, township, city or town where their business is carried on, except such property as shall be liable to assessment elsewhere, in the hands of agents. All persons, companies and corporations in the State owning steamboats, sailing vessels, wharf boats, barges and other water craft, shall be required to list the same for assessment and taxation in the county, township, city or town in which the same may belong or be enrolled, registered or licensed, or kept when not enrolled, registered or licensed.

(Time when property listed, &c., p. 79.)

SEC. 37. Every person shall be listed in the township where he resides when the enlistment is made, for all personal estate owned by him on the first day of April of the year in which the enlistment is made, including all personal estate in his possession, or under his control as trustee, guardian, executor or administrator.

SEC. 49. Schedule of Credits, Stocks and other Personal Property, held by _____

of _____ County.

Number.		Amount Reported.		Valuation	
		Dollars	Cts	Dollars	Cts.
1.	Credit or money at interest, either within or without the State, of par value				
2.	All other demands against persons or bodies corporated either within or without this State. . . . Total amount of all credits . .				
3.	Bona fide indebtedness				
4.	Total value of credits above indebtedness				
5.	Money either in possession or on deposit with banks or persons, either within or without this State				
6.	Bonds issued by bodies corporate, either within or without this State				
7.	Bonds issued by body politic, including State, county, city, town and all other bonds of this class.				

(Deductions from credits, p. 86.)

SEC. 53. In making up the amount of credits, which any person is required to list for himself, or for any other person, company or corporation, he shall be entitled to deduct from the gross amount of credits, the amount of all *bona fide* debts owing by such person, company or corporation to any other person, company or corporation, for a consideration received; but no acknowledgement of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgement made for the purpose of being deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others shall be deducted as the person making out the statement believes he is legally and equitably bound, and will be compelled to pay on account of the inability or solvency of the principal debtor; and if there are other sureties who are able to contribute, then only so much as the surety in whose behalf the statement is made will be bound to contribute: *Provided*, That nothing in

this section shall be so construed as to apply to any bank, company or corporation, exercising banking powers or privileges or to authorize any deductions allowed by this section from the value of any other item of taxation than credits.

(Taxation of banks other than National banks, p. 87)

SEC. 57. Every bank (other than a National bank,) banker, broker, or stock-jobber, shall, at the time fixed by this act for listing personal property, make out and furnish the assessor a sworn statement, showing:

1. The amount of money on hand or in transit.

2. The amount of funds in the hands of other banks, bankers, brokers, or others, subject to draft.

3. The amount of checks or other cash items, the amount thereof not being included in either of the preceding items.

4. The amount of bills receivable, discounted or purchased, and other credits due, or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.

5. The amount of bonds and stocks of every kind, and shares of capital stock, of joint stock, or other companies or corporations, held as an investment, or any way representing assets.

6. All other property appertaining to said business, other than real estate, (which real estate shall be listed and assessed as other real estate is listed and assessed under this act.)

7. The amount of all deposits made with them by other parties.

8. The amount of all accounts payable, other than current deposit accounts.

9. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item.

The aggregate amount of the first, second and third items in statement shall be listed as moneys. The amount of the sixth item shall be listed the same as other similar personal property is listed under this act. The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the fourth item of said statement, and the amount of the remainder, if any, shall be listed as credits. The aggregate amount of the ninth item shall be deducted from the aggregate amount of the fifth item of such statement, and the rematnder shall be listed as bonds or stocks.

(How Banking Bridge Co's., etc., are taxed, p. 88.)

SEC. 59. Banking, bridge, express, ferry, gravel road, gas, in-

surance, manufacturing, mining, plank road, savings bank, stage, steamboat, street railroad, transportation, turnpike, and all other companies and associations, incorporated under the laws of this State (other than National banks,) shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

1. The name and location of the company or association.

2. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

3. The amount of capital stock paid up.

4. The market value, or if no market value, then the actual value of the shares of stock.

5. The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or the improvement of property.

6. The assessed valuation of all its tangible property. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of State. In all cases of failure or refusal of any person, officer, company, or association, to make such return or statement, it shall be the duty of the Assessor to make such return or statement from the best information which he can obtain.

(Banks, State or National, how taxed, p. 89.)

SEC. 62. The shares of capital stock in any bank located within this State, whether organized under the laws of this State or of the United States, shall be assessed to the owner thereof in the county, township, city or town where such bank or banking association is located, and shall be taxed at the same rate as other personal property in the same locality is taxed.

(Same.)

SEC. 63. Such stock shall be assesed with regard to its value on the first day of April of the current year.

(Same.)

SEC. 64. The President or Cashier of every bank or banking association, contemplated by the sixty-second section of this act, shall make out, in addition to the other property required by this act to be listed, a statement, under oath, showing the number of shares comprising the capital stock of such bank, the name and residence of each stockholder, with the number of shares owned by such stockholders in such bank, the par and cash value of each of said shares, and also the par and cash value of the entire capital stock of such bank or banking asso-

ciation, on the first day of April; and shall deliver such statement to the County Auditor in the county wherein such bank or banking association is located, on or before the first day of May; and the County Auditor shall deliver to the proper assessor a copy of such statement, and such capital stock shall thereupon be listed and assessed by the assessor, and return thereof made in all respects the same as similar property belonging to other corporations and individuals, except that it shall be treated as personal property, belonging to banks or banking associations, under the name and style of capital stock.

(Same p. 90.)

SEC. 66. The County Auditor shall enter the valuation of such capital stock on the tax duplicate of the current year, and shall compute and expend (extend) taxes therein the same as against the valuation of other property in the same locality.

(Same)

SEC. 67. Taxes assessed upon such stock shall be paid by the owners or holders thereof, in the same manner and under the same penalties that other individuals or corporations are required to pay taxes.

[Same.]

SEC. 68. It shall be the duty of every such bank, or the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes levied upon their shares of stock, respectively, until it shall be made to appear to such bank, or its officers, that such taxes have been paid; and any officer of any such bank, who shall pay over or authorize the paying over of any such dividend or dividends, or any portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax.

[Taxation for municipal purposes, p. 90.]

SEC. 70. Nothing in this act shall be so construed as to exempt from taxation, for municipal purposes, the shares of capital stock of any bank or banking association organized under the laws of this State, or the United States; but all such shares of stock may be assessed and taxed for all purposes at the same rate as other personal property is assessed and taxed in the same locality.

SEC. 102. All real property in this State, subject to taxation under this act, including real estate becoming taxable for the first time, shall be listed and assessed to the owner or owners thereof by the assessor for the year one thousand eight hundred and seventy-five, and every five (5) years thereafter, with reference to the amount owned on the first day of April of the current year, including all property purchased on that day; *Provided*, That no assessment of real property shall be considered as illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof.

(Auditor's report to Auditor of State, p. 107.)

SEC. 135. The Auditor of each county shall annually, between the first Monday of June and the fifteenth of December, make out a duplicate list of taxes assessed in said county, according to the forms which shall be furnished by the Auditor of State; and, in so doing, he shall enter in separate columns: First, all lands in each civil township, with the names of the owners in alphabetical order, the value of the lands without improvements, and, opposite to this, the value or such land with improvements. Secondly, in like order, he shall enter all town in-lots and out-lots, situate in such township, with the improvements thereon. Thirdly, in its place, all corporation stock, except stocks of National banks, which shall be assessed and taxed as in this act elsewhere provided. Fourthly, all other personal property subject to taxation, and which shall be charged together with the poll tax, in the civil township where the owner resides. Fifthly, he shall number each original township in regular progression, as the same shall stand entered on his duplicate, and the same township shall retain the same numbers from year to year; and Sixthly, he shall number each name in each township in regular progression.

(Board of Equalization, p. 111.)

SEC. 150. The Board of County Commissioners, Auditor and Assessor, shall meet at the seat of justice of each county, on the first Monday of June, annually, and shall constitute a Board of Equalization, who shall have power to hear and determine the complaint of any owner of any real or personal property, moneys, rights, credits, and effects, or poll listed, respecting the same, and the valuation of any such property or taxables, made subsequent to the preceding first day of April, and shall correct any list or valuation, as they may deem proper, either by adding to or deducting from their valuation such sums as to them, or a majority of them, shall appear just and equitable.

In order further to illustrate the present law, and show that it was made purely, grossly unequal, it may be noted that while the act of Congress prohibited discrimination between National Bank shares and those of State institutions, the Indiana Legislature passed an act conforming to this prohibition, as enunciated by the Supreme Court. [3. Ind. Stat. p. 33.] We copy sections one and eight, which are sufficient to illustrate the change of policy under the act of 1872. They are as follows:

SEC. 1 *Be it enacted by the General Assembly of the State of Indiana*, That the shares of capital stock, owned or held by any person or body corporate in any bank or banking association, chartered or organized under the laws of this State, or chartered or organized under the laws of the United States, and having its banking house or place of business in this State, shall be included in the valuation of the personal property of the owner thereof for taxation, and shall be taxed at the place where such bank or banking association is or may be located, at the same rate that is or may be assessed on other taxable personal property in the hands of individuals in this State.

SEC. 8. In making the assessment, and ascertaining the value of any shares of bank stock, under the provisions of this act, it shall be lawful to deduct from the gross cash value of such shares the proper proportionate part of the value of any real estate held or owned by any such bank or banking association in this State, and taxed under the laws thereof, in which any part of the capital stock of such bank or banking association, may be invested, and, in making such deduction, the valuation of such real estate for taxation shall be the criterion.

(Lien upon Real Estate for all Taxes.)

SEC. 169. The lien of the State for all taxes for state, county, school, road, or township purposes, shall attach on all real estate on the first day of April, annually, and such lien shall be perpetual for all taxes due from the owner thereof, which have heretofore accrued, or shall hereafter accrue, with the interest and penalties in each case, until payment, which lien shall in no wise be affected or destroyed by any sale or transfer of any such real estate.

SEC. 170. All the property, both real and personal, situated in any county, shall be liable for the payment of all taxes, penalties, interest and costs charged to the owner thereof in such county, and no partial payment of such taxes, penalties,

interest, or cost, shall discharge or release any part or portion of such property, until the whole be paid; which lien shall in no wise be affected or destroyed by any sale or transfer of any such personal property.

(Tax deed and its effects.)

SEC. 224. Such conveyance shall be executed by the county auditor, under his hand and seal, and the execution thereof shall be witnessed by the county treasurer, and such deed shall be conclusive evidence of the truth of all the facts therein recited, with the exception of the fact that payment of the taxes for which the lands named therein were sold, had not been made by or on behalf of the proper owner of such lands in due time, and to the proper officer; of which last named fact such deed shall be held as *prima facie* evidence, and no more; and such deed shall be in the following form as nearly as the nature of the case will admit, namely:

Whereas, A. B. did, on the ——— day of ———, 18—, produce to the undersigned, C. D., auditor of the county of———, in the State of Indiana, a certificate of purchase in writing, bearing date the ——— day of ———, 18—, signed by E. F., who at the last mentioned date was auditor of said county, from which it appears that the said A. B. did, on the ——— day of ———, 18—, purchase at public auction, at the door of the court house in said county, the tract, parcel, or lot of land, lastly in this indenture described, and which lot was sold to ——— for the sum of ——— dollars and—— cents, being the amount due on the following tracts, or lots of land returned delinquent in name of G. H., for the non-payment of taxes, costs and charges, for the years ———, namely: [*here set out the lands offered for sale*] which said lands have been recorded, among other tracts, in the office of said auditor as delinquent for the non-payment of taxes, costs and charges due for the year last aforesaid, and a true copy of said record transmitted to the office of the auditor of state, in manner and form prescribed by law, and legal publication made of the sale of said lands, on the said ——— day of ———, 18—, and it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and none of the saving clauses of the —— section of ——applying to this tract or parcel of land, and neither the said G. H., nor any person in his behalf, having paid or tendered the amount due the said A. B. on account of the aforesaid purchase, and for taxes for him since paid, and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tracts above described that would sell for the amount due thereon for taxes, costs and charges as above specified, and it appearing from the records of said county auditor's office, that the aforesaid lands were legally liable for taxation, and had been duly assessed and properly charged on the duplicate with the taxes for the years ———;

Therefore, this indenture, made this—— day of ——, 18—, between the State of Indiana, by C. D., auditor of said county, of the first part, and the said A. B. of the second part witnesseth: That the said pary of the first part for and in consideration of the premises, has granted, bargained and sold unto the said party of the second part, his heirs and assigns, forever, the

In order further to illustrate the present law, and show that it was made purely, grossly unequal, it may be noted that while the act of Congress prohibited discrimination between National Bank shares and those of State institutions, the Indiana Legislature passed an act conforming to this prohibition, as enunciated by the Supreme Court. [3. Ind. Stat. p. 33.] We copy sections one and eight, which are sufficient to illustrate the change of policy under the act of 1872. They are as follows:

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SEC. 8. In making the assessment, and ascertaining the value of any shares of bank stock, under the provisions of this act, it shall be lawful to deduct from the gross cash value of such shares the proper proportionate part of the value of any real estate held or owned by any such bank or banking association in this State, and taxed under the laws thereof, in which any part of the capital stock of such bank or banking association, may be invested, and, in making such deduction, the valuation of such real estate for taxation shall be the criterion.

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SEC. 170. All the property, both real and personal, situated in any county, shall be liable for the payment of all taxes, penalties, interest and costs charged to the owner thereof in such county, and no partial payment of such taxes, penalties,

interest, or cost, shall discharge or release any part or portion of such property, until the whole be paid; which lien shall in no wise be affected or destroyed by any sale or transfer of any such personal property.

(Tax deed and its effects.)

SEC. 224. Such conveyance shall be executed by the county auditor, under his hand and seal, and the execution thereof shall be witnessed by the county treasurer, and such deed shall be conclusive evidence of the truth of all the facts therein recited, with the exception of the fact that payment of the taxes for which the lands named therein were sold, had not been made by or on behalf of the proper owner of such lands in due time, and to the proper officer; of which last named fact such deed shall be held as *prima facie* evidence, and no more; and such deed shall be in the following form as nearly as the nature of the case will admit, namely:

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Therefore, this indenture, made this—— day of ——, 18—, between the State of Indiana, by C. D., auditor of said county, of the first part, and the said A. B. of the second part witnesseth: That the said pary of the first part for and in consideration of the premises, has granted, bargained and sold unto the said party of the second part, his heirs and assigns, forever, the

tract or parcel of land mentioned in said certificate and described as follows: namely: [*here set out the particular tract or parcel sold.*] to have and to hold the said last mentioned tract or parcel of land, with the appurtenances therein to belonging, to the said party of the second part, his heirs and assigns, forever; in as full and ample a manner as the said auditor of said county is empowered by law to sell the same.

In testimony whereof, the said C. D., auditor of said county of ——, has hereunto set his hand, and affixed the seal of the board of county commissioners, the day and year last above written.

——— (*Auditor's Seal.*)

BRIEF OF POINTS AND AUTHORITIES

BY

ALEXANDER GILCHRIST AND ASA IGLEHART,

Of Counsel for the Evansville National Bank.

The questions arising upon the appeal and cross-appeal will be argued together, and it is proposed to sustain the ruling of the Court upon the points involved in the cross-appeal of the Treasurer, and at the same time to show that the ruling of the Circuit Court assigned for error in the appeal should be reversed.

I.

This was a bill for an injunction by the Bank against the County Treasurer, who is the collector of the State, county, township, school and road taxes for Vanderburgh county. The grounds upon which the equity jurisdiction was invoked grew out of the fiduciary character of the bank. The contention is, that the treasurer is seeking and threatening to enforce an illegal tax; that the shareholders insist that it is illegal, and declare that the bank shall

not pay it; that the statutes require the dividends to be held for its payment, and forbid the transfer of shares, and that by usage the bank actually pays the taxes and deducts them from the dividends; that if the bank obey the law it will be sued by the shareholders, and if it obey the demands of the shareholders, it will be involved in litigation with the treasurer. For this reason, and the additional reason, that the bank, as trustee, has a right to invoke the aid of the Court in defense of the trust property, against an illegal exaction, the jurisdiction of a court of equity is well sustained. (Pelton vs. National Bank, 101. U. S., 143; National Bank vs. Kimball, 103. Id 732–35; N. Y. & N. H. R. R. Co. vs. Scheuyler. 17. N. Y., 502, we call special attention to the proposition, that the facts stated in the original bill would not sustain a bill in equity for an injunction in behalf of a stockholder, under the rulings in this court. (Dows vs. The City of Chicago, 11. Wall. 108; Humerwinkle, vs. Georgetown, 15. Wall. 547,) and the suit is, therefore, only sustainable in the right of the bank itself, and as trustee. And whatever right the shareholders have to resist the payment of the taxes, whether as to such shareholders, the remedy would be at law or in equity, may be enforced here. The bill in its nature belongs to the class termed, bills *quia timet* and unless the inquiry under it shall determine the question of the legality or illegality of all the taxes assessed upon the shares for 1879, and inhibit the collection of all such taxes, the purpose of the suit will not be accomplished. But while this is so, the supplemental bill shows an additional ground for relief, to-wit: the threat and advertisement for the sale of the property of the *bank* for the payment of the taxes. This, of course, justifies the injunction independently of the grounds alleged in the original bill. It shows a threat to sell the real estate of the bank and an actual advertisement there-

of for the payment of the taxes on the shares, thereby casting a cloud upon the title of the bank, besides the absolute illegality of the tax itself, not apparent upon the face of the duplicate. But upon this point more hereafter.

II.

THE STATUTE LAW OF 1872 IS IN VIOLATION OF §5,219 OF THE ACT OF CONGRESS, In this,

That by its terms it imposes upon bank shares taxation at a greater rate than that imposed upon other moneyed capital in the hands of individual citizens. Not that a different rate of taxation is fixed. But by the provisions of the law as to the methods of assessment and enrollment for taxation, greater burdens are imposed upon shares of National banks than upon other moneyed capital, and this under the recent rulings is taxation at a greater rate. *Cummings vs. The National Bank*, 101, *U. S.* 153; *Pelton vs. The National Bank, Supra* ; *The people on the relation of Williams vs. Weaver*, 100. U. S. 539.

This discrimination exists under the statutes of Indiana in three important particulars as appears in the abstract above, and which we proceed to notice.

III.

DISCRIMINATION AGAINST BANK SHARES AND IN FAVOR OF TAXABLE CREDITS AND MONEY AT INTEREST.

Subdivision 2, of §12, of the tax Act *Supra*, defines Credits thus :

"Every credit for a sum certain, payable either in money or labor, shall be valued at a fair cash value for the sum so paya-

ble, if for any article of property, or for labor, or for services of any kind, it shall be valued at the current price of such property, labor or service."

In addition to this, the 49th § of the act, by the form of the schedule, exempts both taxable credits and money at interest from taxation to the extent of the *bona fide* indebtedness of the tax payer, as is fully recognized by the Supreme Court, in Matter vs. Campbell, treasurer, 71. Ind., 512. That there is a manifest unfriendly discrimination against National banks, and in favor of this class of moneyed capital, is well stated and illustrated by His Honor, Mr. Justice Harlan, in his opinion and from which we quote as all the argument necessary:

"The same law provides for the taxation of National bank shares in the hands of the respective owners, according to their fair cash or selling value. It excludes from the valuation of such shares any estimate whatever of the shareholder's debts. No allowance or deduction, on that account, is permitted, although his debts may exceed the value of his National bank stock, he must pay taxes on the cash value of that stock without any reference to the amount of such indebtedness.

Turning now to the general provisions of the State law, regulating the assessment and valuation of the personal property of individual citizens (other than bank shares,) I find that each tax payer is required to list, among other things, his "credits." (1. Rev. St., Ind. 1876, pp. 75, 81. Secs. 15, 48.)

"Under that head is included 'money at interest, within or without the State.' To that effect, is the recent decision of the Supreme Court of this State. (Matter vs. Campbell, 71. Ind. 512.) He is not taxed for the full or fair cash value of such credits, but only upon the balance which may remain after deducting therefrom the amount of his *bona fide* indebtedness, including his proportionate liability as security for all others arising from the inability or insolvency of the principal debtor, and for which he believes himself to be legally and equitably bound, but excluding all acknowledgments of indebtedness, not founded on actual consideration or made for the purpose of being deducted. (1. R. S., Ind., p. 86, Secs. 53, 4: Matter vs. Campbell, 71. Ind., 512.) Plainly, therefore, money capital, represented by loans, or invested in "credits," is not taxed as money capital represented by National bank stock is taxed, viz: according to its fair value and without reference to the indebtedness of the tax payer. Only so much of a tax payer's credits is taxed as exceeds the amount of his *bona fide*

indebtedness. A single illustration will show the operation of the State law in some cases: A, having $10,000 in money, owing debts to the amount of $6,000, and having no credits, invests that money in National bank stock. By the State law he is required to pay taxes upon the amount so invested, without deduction, in any form, of his indebtedness of $6,000. But if he should lend the $10,000 and take a note therefor, or if he should buy promissory notes with that money, thereby becoming owner of credits, he will not be required to pay taxes upon the money value of his credits, but only upon $4,000, the difference between his credits and his indebtedness.

"It is thus seen, that under the operation of the rule, presented by the State law, moneyed capital not invested in National bank shares, may be burdened with less taxation than the same amount of capital invested in such shares would be. Congress, in granting authority to the States to tax National bank shares, certainly did not intend to expose moneyed capital so invested to greater burdens than were imposed upon other moneyed capital in the hands of individual citizens. On the contrary, its purpose was for all purposes of local taxation, to place moneyed capital, represented by National bank shares, upon the same footing with the most favored moneyed capital in the hands of individual citizens of any State, the power granted by Congress. Here the State law, by way of diminished taxation, accords to moneyed capital invested in credits, held by its citizens, privileges of a substantial character, which it denies to capital invested in National bank shares.

"The State law, in effect, holds out an inducement not to invest in National bank shares, but in 'credits.' It seems to me that that law enforces, in certain cases, a rate of taxation which is inconsistent with the principle of equality underlying the legislation of Congress, and conformity to which is essential to the validity of State taxation of National bank shares."

For another illustration, take the case of the private bankers, shown in the record, [pp. 25–27] These are assessed under the provisions of §57 of the tax law, by which private bankers or brokers are permitted to deduct their indebtedness to depositors from their bills receivable, usually money loaned. The evidence in the record here shows the tax returns, assessment and entry upon the duplicate for taxation of the assets of six private banking firms. These six firms have of bills receivable alone, $2,555,119, and upon this sum, after deducting the indebtedness under this statute,

there is only left for taxation $982. The whole of the remainder, or $2,555,617, being covered, and more than covered by indebtedness. Thus, there is in the single city of Indianapolis, a discrimination against National bank shares, amounting to more than the whole of the value of all of the shares of all the Natianal banks in the same city. Thus, six holders of moneyed capital, money loaned, have exemptions amounting to more than two and a half millions of dollars, because they are indebted for a like sum. But the holders of all the National bank shares, in the same city, may owe sums equal to the whole value of their shares, and still they have to pay taxes upon the whole sum. Thus, in this single item, is withdrawn from taxation, in the county of Marion, a sum equal to one-fifth of the whole personal property assessed for taxation for that year as appears by the Auditor's report, a public document of record in every county in the State.

It very fully appears then, that in all cases of taxable credits, including moneys at interest, the holder may deduct his debts, while no such privilege is awarded to the holder of bank shares; hence, there is an illegal discrimination in favor of other moneyed capital and against National banks.

In the Commercial Bank vs. Hines, [3. Ohio St. 1,] the Supreme Court of Ohio, held a discrimination like the one in controversy, was unconstitutional under a provision of the Ohio constitution enjoining equality, but, as the other portion of the act was perfect, rejecting the provision for deduction, the court upheld the tax and declared the provision for deduction void. But in Indiana there is no such constitutional provisions, although § 49 is copied from the Ohio law. The Indiana Supreme Court, in *Matter vs. Campbell, Supra* held the exemption constitutional. For although the constitutionality of the deduction

of debts from credits is not discussed in the opinion in that case, it was necessarily involved in the case, and was discussed elaborately in the briefs in the record.

VI.

DISCRIMINATION AGAINST NATIONAL BANKS IN TAXING THEIR REAL ESTATE WHICH FORMS A PART OF THE VALUE OF THEIR SHARES.

The 12. § of the State Revenue laws *Supra*, in the 4. subdivision, provides for the taxation of corporations other than banks, created under the State laws, and *expressly* provides, that where the tangible property is taxed, the shares of capital stock shall not be taxed; and so of banks other than National banks. [§ 57 and 70.] thus making a discrimination in favor of moneyed capital invested in private banking in the capital of State banks and in manufacturing corporations, and against National bank shares, which are taxed at a greater rate in the proportion that the aggregate value of the real estate bears to the whole value of the shares, the rate being increased to the extent of the value of the real estate. A law thus providing for double taxation, has been held void by the Circuit Court for the District of Kentucky, in an able opinion by Judge Brown. (City National Bank vs. City of Paducah; Thompson N. bank cases., 300.

The same doctrine has been recently indorsed by the Supreme Court of Alabama, in a case reported only in the May number of *The Banker's Magazine*, p. 881. (Pollard, collector, vs. The State Ex. Rel., &c.) The State law of Alabama was like the Indiana law in two particulars: 1. It taxed both the shares and the real estate. 2. It allowed the de-

duction of debts from taxable credits. The court, upon the authority of *People vs. Weaver*, held both provisions invalid.

The answer is made, that we are not injured in the case at bar, because it is said the value of the real estate was deducted from the aggregate value of the shares; and in this view, His Honor, Mr. Justice Harlan, at the Circuit seems to have concurred, but we can add nothing to our arguments in the Circuit but beg to repeat it, as no attempt has been made to answer it:

"It appears from the evidence, that in this case, the taxing officers did deduct, from what they were pleased to call the gross value of the shares, the assessed value of the real estate; that they were better than the statute—in fact, violated the statute—and it may be claimed that this fact relieves the assessment from any illegality on this ground. Not so. The objection is not to any particular unfairness of these officers, but to the inherent vice of the statute. No better illustration of the argument hereafter presented, of the distinction between a restriction upon a power, and the grant of a power, to be exercised only upon complying with precedent conditions, can be formed than thus: Had this double taxation been forbidden by the State Constitution, the statute in question would doubtless have been valid, in so far as it authorized the taxation of the full value of the shares. The provision for taxing, in addition, property which forms a part of that value would have been invalid. The officers in making the assessment, could safely follow—would be bound to follow—the statute in so far as it was constitutional, and disregard the portion prohibited by the constitution.

But in this case, the State has power to legislate at all, only on the conditions specified in section 5,219. That act is not made as a guide for the officers who levy and collect taxes. It is directed

to the law making power of the State. The assessor does not look to this act for his guidance. He must look alone to the law of the State, and if the statute in question is a valid one, he is bound to make the assessment as commanded by it. He must take the law which creates, guides and controls his functions as it is, not as a prior act of Congress says it ought to be.

We of course do not complain that in this particular instance the law has been violated for our benefit, but it is neither legal nor proper that the banks, in order to obtain justice, must be left to the willingness of the assessor or other officer to disobey the law, which is the only source of his authority."

The questions whether in this suit, the relief in behalf of the shareholders can only be given in cases where he has been *actually* and *directly* injured, and whether if the State tax law violate the act of Congress, its enforcement will be enjoined without regard to the question of direct or even consequential injury to the shareholders, will be discussed under a separate head further on.

VII.

THE INDIANA STATUTE TAXES NATIONAL BANK SHARES AT A GREATER RATE THAN OTHER MONEYED CAPITAL INVESTED IN BANKING BY BANKS ORGANIZED UNDER THE LAWS OF THE STATE OF INDIANA, OR BY PRIVATE BANKERS, EXCLUDING THE VALUE OF NATIONAL SECURITIES FROM THE VALUATION IN THE LATTER CLASSES, AND INCLUDING IN THE FORMER.

We are aware that when the provision for the taxation of National bank shares was in a different form, this court held that where the State tax law

imposed a tax on the *shares* of National banks, but levied the tax on the *stock* of the State banks, court held was an illegal discrimination in favor of the State banks which rendered the State law void; and that when the tax was changed, and the State banks were subjected to the same rule as the National banks, that the law was valid, notwithstanding the assets of the National banks were mainly invested in untaxable securities. (Van Allen vs. The Assessors, 3. Wall. 573; People vs. Commissioners, 4. Wall., 244.) The questions presented in the bill under this head may seem to be settled against us in this latter case, but we submit that we present a different question to the one presented there. We are aware that the portion of the banking act which forbade discrimination against National bank shares in favor of State banks, is dropped from § 5,219, the governing section here. But the inhibition of discrimination in favor of *other moneyed capital*, embraces capital invested in other banking enterprises. We call special attention to the very able and discriminating opinion of Judge Brown in the case of the *Bank vs. Paducah*, Thompson's N. B. cases, 300, cited above, wherein he discusses the effect of the changes in this section of the act. By par. 57. *Supra*. moneyed capital invested in private banking, or other banking, besides National banks, is exempt from taxation to the same extent as represented by untaxable securities, and so of all other State corporations, the estimate of the value of untaxable securities is in every instance deducted from the value of shares of capital stock, or of capital stock itself. But whether there be any distinction between the case of *The People vs. The Commissioners*, *4. Wall., Supra*, or not, we submit with great deference, that that case was decided by a divided court, over a very able dissent by the Chief Justice, supported by two of the ablest of the associates, ren-

dered in the case of *Van Allen vs. The Assessors*, and adhered to and referred to by the same justice, in The People vs. The Commissioners. And we further submit, that while these latter cases have been in general adhered to, yet they are virtually overruled by The People Ex. Rel.; Williams vs. Weaver, *supra*, and the Ohio tax cases following in the same line. The Record shows here, (See evidence of Samuel Bayard, R., pp. 144,) that a sum equal to the whole capital and surplus of the bank is invested in untaxable securities, most of them, of course, pledged for the redemption of its circulation. If it be said that we cannot say that our *capital* is thus invested, we answer that a sum equal to the whole capital is thus invested, and the first money paid in goes to buy these untaxable securities, and if they were withdrawn from the taxable assets of the bank, as they are from those of other banking institutions, under the Indiana tax law, there would be nothing left possessing any value for taxation. Without these securities there would be no value to the shares. But we introduce in further answer to this objection, a paragraph of the opinion of the Chief Justice in the *Van Allen* case in answer to a similar objection, and an argument which we think, unanswerable:

"All the assessors would have to do, would be to ascertain the value of the whole property of the Association and deduct the amount of bonds. The remainder, divided by the number of shares, would give the value of each share to be taxed. And the assessor must value the whole property and divide it by the number of shares in order to make a true valuation of shares. If he does not do this, he must assess the shares at an arbitrary or speculative valuation. This is not what is required. The law demands true valuation; and true valuation, with deduction of bonds, places the shareholder on exact equality with the holder of other moneyed capital, which the law also demands No other mode of valuation secures that equality." (3. Wall., 601)

VIII.

WHAT DOES THE TERM "MONEYED CAPITAL" SIGNIFY?

(1.) Money invested in bank shares, is moneyed capital, else why *other moneyed capital*? (2.) If money invested in National bank shares, so is money invested in shares of any other moneyed corporation. (*Cummings vs. The Bank, People Ex. Rel., Williams vs. Weaver; Pelton vs. The National Bank, Supra.*.) So is money invested in any private enterprise which has its representative in choses in action, or other evidences of liability, or even in mere book debts; indeed, very clearly, all taxable credits from which debts may be deducted under the Indiana Revenue law, are properly classed as moneyed capital; and as this has been so decided, in our favor in the case at bar, we need not elaborate the point here.

IX.

HOW ARE HOLDERS OF NATIONAL BANK SHARES INJURED BY THE DISCRIMINATIONS ALREADY POINTED OUT?

Having shown that in three several particulars, the Revenue laws of Indiana discriminate against National bank shares, and in favor of other moneyed capital, we next inquire whether, as alleged in the original bill, this discrimination operates to the injury of all the shareholders of the complainants bank, where these State laws, authorizing these discriminations are fully carried out by the tax officers?

The deductions of debts from taxable credits, discussed in the first enumeration of discriminations, work injustice directly to all shareholders who are indebted and have no taxable credits from which to deduct the same, as in the case of Bayard, Mackey and the Prestons. About this there is no dispute. But *all* the shareholders are injured because the denial to the holders of bank shares the rights of the holders of other moneyed capital, lessens the *value* of these shares, and thereby injures the holders of them.

The allowance of these deductions from moneyed capital is large. Taking the illustrations which we have given in a single class of exemptions, there is at least one-half of the moneyed capital, and not less than one-fourth of the personal property of the State, at least 15 to 20 per cent. of the whole taxable property of the State withdrawn from taxation, and it is a proposition of which the court takes judicial knowledge, that the increase of the per cent follows the deduction of the amount of taxables. This item alone makes an increase of from $1,500 to $2,000 in the case at bar for this single year's assessment, independently of the cases where special damages are proved; and if we are right in reference to the double taxation of real estate, here the law carried out, as we must presume it is, notwithstanding its apparent violation, it produces a direct appreciable injury to the shareholders, being 28-840 increase upon the whole sum. For while it seems that the shares are taxed a little below their cash value, this is historically true of all property; and if we are right upon the question of the right to deduct untaxable securities from the assets of the bank, in the ascertainment of the value of the shares, the injury is much greater, as such deduction would reduce the taxes to a merely nominal sum. Upon the effect of these deductions we call attention to the dissenting opinion of Judge

Ranney. (3. Ohio State, *Supra.*)

X.

THE STATE LAW BEING THUS IN CONFLICT WITH THE ACT OF CONGRESS, IS INVALID, AND NO VALID TAX CAN BE LEVIED UNDER IT.

This proposition is substantially endorsed in the opinion of Mr. Justice Harlan, at the Circuit, thus:

"The State law, in effect, holds out an inducement not to invest in National bank shares, but in "credits." It seems to me, that that law enforces, in certain cases, a rate of taxation which is inconsistent with the principal of equality underlying the legislation of Congress, and conformity to which is essential to the validity of State taxation of National bank shares."

If conformity to the act of Congress is essential to the *validity* of State taxation, and it most assuredly is, then, the result of want of conformity must he *invalidity*.

In the absence of the authority conferred in Sec. 5,219, Revised Statute, no tax whatever could be assessed against the shares of National banks. McCullock vs. Maryland, 4. Wheat., 316; Weston vs. City of Charleston, 2. Peters, 449; Osborn vs. U. S. Bank, 9. Peters, 738; People Ex. Rel., Williams vs. Weaver, 100. U. S., 547.

The power to tax the National banks, is only upon the condition, that the taxation shall be at no greater rate than upon other moneyed capital. If the law which directs the taxation makes, as in this case, a clear discrimination in favor of other moneyed capital, can it be a valid exercise of the power which is given to tax? If the State Legislation is in conflict with the Act of Congress, is it not totally null so far as it directs the taxation of National banks, and if a nullity, how can a tax for any amount be assessed under its provisions?

Upon the subject of conformity of the State statute with the act of Congress, Mr. Justice Swayne, in *Austin vs. The Aldermen*, 7. Wall. 664, speaking for the Court, says, concerning the power of the States to tax National banks:

"It is well settled that the States cannot exercise this authority in respect to any of the instrumentalities which the general government may create for the performance of its constitutional functions. It is equally well settled that this exemption may be waived wholly, or with such limitations and qualifications as may be deemed proper by the law making power of the Nation; but the waiver must be clear, and every well grounded doubt upon the subject should be resolved in favor of the exemption."

The position taken by counsel for the Treasurer that the tax if illegal at all, was illegal only as to the amount of the discrimination, and that before this suit can be maintained, the bank must ascertain of each of its stockholders the amount which should be deducted from the tax on his shares, and then pay or offer to pay the remainder, is neither logical nor practicable.

By the explicit language of the act, the shareholder cannot deduct his indebtedness. Sections 53 and 54, 1. Stat. 86 and 87. The assessor derives his authority from the law of the State. He is not a Federal officer. The Act of Congress was not intended to guide the action of the assessors, but as a restriction upon the law-making power of the State. The officers of the State are bound to follow the State law, either as it plainly means, or as the court has construed it. People, ex. rel.; Williams vs. Weaver, Supra.

This Court in this case accepted the construction given to the New York statutes by the Court of Appeals, that no deduction by a share holder in a National bank of his indebtedness was allowable under those statutes. The Court accepting such construction, did not and could not say that the assessor must allow the de-

duction, or what would be more illogical that the collector should collect the tax of the shareholder, less a proper deduction, but the act of New York, in as much as it did not allow such deduction, was in conflict with the Act of Congress. If in conflict, then there was no valid law for the taxation of National bank shares, and any assessment upon them was illegal. The court does not express this conclusion in words, but no other conclusion is possible.

In the cases in which the legislation of a State has been held to be in conflict with the Acts of Congress, the decision has been that the tax was altogether invalid, and that the defect was one to be remedied by the State Legislature. People vs. Allen, 3. Wall., 573; People vs. Bradley, 4. Wall., 459; City National Bank vs. Paducah, Thompson, 300.

If the statute is in conflict with section 5,219, it is altogether void. The case of the people vs. Commissioners of Taxes, 94. U. S., 415; is conclusive upon this point. That case was brought under the New York statute of 1865, which had been adjudged invalid by this Court in Van Allen vs. Assessors, because repugnant to the provisions of the 41st section of the National Banking Act. The claim of the Gallatin Bank, in the case of the People vs. Commissioners, etc., *Supra*, was that under the 10th section of the N. Y. Act of 1865—a section if taken by itself in perfect conformity with the enabling act—the tax imposed on such shares should not exceed the par value thereof. The Court says:

"Had this been a valid statute, we might have been called upon to discuss the point raised. But it was held in Van Allen vs. The Assessors, 3. Wallace, 573, that this statute was fatally defective, in that it did not contain a proviso, that the tax thereby authorized to be imposed should not exceed the rate imposed upon banks organized under the authority of the State. The clause now laid hold of by the relators, was simply a pro-

viso or qualification of that system. It necessarily fell with it, when the main idea was thrown out of existence, the subordinate parts, which were adjuncts of and dependent upon the main theory, ceased to exist. There never was, legally speaking, any such proviso or enactment as the relators claim the benefit of. Of course there could be no violation of a contract contained in a contract which never existed." See also Woolsey vs. Dodge, 6. McLean, 142.

Again, it is altogether impracticable for the bank to attempt to adjust the proper amount of deductions to be made on account of the indebtedness of its stockholders, and to pay the tax less this deduction.

The assessment is made without allowing such deduction; not only is there no deduction allowed, but there is no opportunity for the stockholder to claim it. He does not list his stock, and has no notice of the listing. The assessment is made in this case not against the stockholder, but an aggregate amount is assessed against the bank as "personal property." The bank, according to the treasurer's theory, must ascertain at its peril, the indebtedness of its numerous stockholders, must then decide as a question of law what deduction should be made; must further ascertain if any, and if so, what deduction has already been made on account of debts in other assessments, and then after ascertaining all these facts must tender the reduced amount of the tax. It is not a case where the amount of the illegal tax is apparent on the face of the proceedings, or is ascertainable by calculation, but where if it can be arrived at at all, it can be done only by personal consultation with each stockholder, by subjecting him to the same examination an assessor would do, by determining in each case whether the indebtedness sought to be deducted was proper in amount, and was of a character which, under the law, could be deducted, and by ascertaining whether any deduction on this score had already been made. Such an investigation would be impracticable.

It is not for officers who are acting under a law which forbids such a deduction to be made, and who have given no opportunity for such a deduction to be even claimed, to say to the bank, you must find out what would be a proper deduction, and pay the remainder. This court could not compel the assessor or the Board of Equalization to make this deduction against the express language of the statute under which they act. Much less can it say to the collector of the tax, this abatement must be made. The jurisdiction of the court is only, when it finds the law of the State in conflict with the act of Congress, to declare it void, and leave to the legislature to frame a proper act, or abandon the imposition of State taxes upon bank shares.

XI.

THE QUESTION UNDER DISCUSSION ILLUSTRATED BY THE RULES OF CONSTITUTIONAL CONSTRUCTION.

In our State governments where a constitution means simply a limitation upon the unlimited power which the legislature would otherwise possess, and where things forbidden and things not forbidden are combined in one act or substantive subdivision of an act of the legislature, the things forbidden in the act or subdivision must be held void, as in conflict with the constitution, but if there be, in the act or subdivision, sufficient substantial constitutional provisions to constitute a valid act of the legislature or subdivision thereof, capable of intelligent enforcement after striking out the unconstitutional provisions, then, notwithstanding the invalid provisions, the constitutional provisions will be sustained and enforced as valid acts

of the legislature or subdivisions thereof as the case may be, notwithstanding the unconstitutional provisions. But on the other hand, if an act of the Legislature or substantial subdivision of an act, contain provisions constitutional, and others unconstitutional, and if the latter be stricken out an act is left so imperfect, uncertain or unintelligible as not to be enforced consistently with the constitution, or not to be enforced at all, then the whole act or subdivision must fall. (Cooley's Const. Limitations, 177, 178 and 179; United States vs. Reese, 92 U. S., 214.)

These propositions are elementary; they need no illustration, no authorities; they are founded in the principles of common sense and right reason, and must prevail in every State where constitutional limitations prevail.

Now suppose this rule shall prevail here—and we shall show that a much stricter rule prevails in the case at bar—how would the case stand? In this inquiry let us assume that the State has full power to tax bank shares, but that Sec. 5,219 is a constitutional limitation only, and not a grant of power upon an express condition. The acts in controversy are passed, discrimination is forbidden by the limitation, several provisions of the statute contain exemptions, and also contain peculiar provisions without the observance of which no tax can be levied; these exemptions are valid in themselves, but they are confined to particular subjects of taxation, and not because these exemptions exist, but because in violation of this limitation as to bank shares, no like exepmtion is provided in favor of such shares, *as to them, the law must be held inoperative.* The taxing officer cannot, as in New York, treat the invalid part of the law as invalid, because the invalidity consists in failing to provide means for allowing an exemption in favor of bank shares,

specifically provided for, as to other classes of property, and no provision is made for the allowance, and none could be given by the taxing officer without a gross violation of his duty, as already remarked.

Recurring to the rules already stated, what is the result: (1.) The taxation of bank shares is a substantive subdivision of the Indiana Taxation Act; it may fall and the remainder of the act may stand. (2.) The subdivision of the act, consisting of a number of sections providing for the taxation of shares of National banks, provides for a system of taxation which would be valid but for the other provisions of the same act, but owing to those other provisions, these sections are in plain violation of section 5,216 which we are now treating as if it were only a constitutional limitation. This conflict results from the absence of provisions to bring the principle of taxation of these shares in harmony with the other portions of the act, which provide for the taxation of other moneyed capital, whereby the discrimination forbidden should be prevented. But as these provisions are wanting, the conflict between the sections of the State tax law relative to the taxation of banks is palpable. That being so under the provisions of these sections and the other portion of the State law, the intelligent enforcement of these sections consistently with this limitation, even treated as a constitutional limitation is *impossible*; hence, under the plainest principles of constitutional law, these provisions must be held void.

The tax officer cannot take the law into his hands; he cannot disregard the exemptions to other moneyed capital; because they are in themselves valid, and are enjoined by law and he cannot disregard them. He cannot make the exemptions in favor of bank shareholders, as has already been said, because he only executes the State law. If he could

even be compelled to do this, he might with equal plausibility be required in a State where equality of taxation is enjoined by the constitution to determine that such exemptions should be extended to real estate. In such a case he would not assess property under the State law, but under the State constitution and the State and Federal laws, following the latter, where they were in conflict.

The discrimination consists in exemptions to other moneyed capital while there are none to bank shares. This can be remedied by either one of two methods, either leaving off all exemptions from moneyed capital, or giving the holders of bank shares like exemptions to those allowed upon other moneyed capital. Can a taxing officer make this election and do justice despite the law? Can the court do it? Certainly not. The conflict is plain and irreconcilable, and can only be cured by legislative action.

Let us proceed to examine this restrictive section as the grant of power with an express condition annexed.

Illustrations of this class of restrictions are found in the Federal Constitution and in Municipal Charters. In such a case, as the power is derived from the Constitution, and as it is strictly construed, there is no implication in favor of any extension of the power. As a logical sequence where the power is coupled with an express *condition*, as here, unless the condition is complied with the exercise of power is unprovided for, and is therefore *invalid*. As applied to the case at bar, Congress having *all* the power and authority as to the taxation of its securities and its instrumentalities, says to the states, *you may tax bank shares upon two conditions: First, The tax must be imposed by the authorities at the situs of the bank. Second, You must not tax at a greater rate "than is assessed upon other monied capital" &c.*

The grant of power and its exceptions have all been the subject of judicial examination by the Supreme Court and other courts—the highest tribunals of the country—and have received a uniform construction. Thus it has been decided that the tax must be upon the shares, and if the law provides for taxation upon the capital stock, it is not within the power, and is absolutely *void* and to obtain relief against it, it is not necessary to show as is done here that injury is threatened.

But where it was required that there should be no discrimination in favor of State banks and they were taxed upon their capital stock, and other National Banks upon their shares, the court held the act *void*, not because injurious discriminations were threatened, but because, "in as much as the capital stock of State banks may consist of the bonds the United States which are exempt from State taxation it is easy to see a tax on the capital is not the equivalent of a tax on the shares of the stockholders.

And therefore what? Why the act is void and must be remedied by legislation. (Mr. Justice Nelson in Van Allen vs. The Assessors, 3 Wall. 573, et. seq.) And so "*shares of capital stock*" is discriptive of the power and no tax can be otherwise imposed.

It appearing that a compliance with these two conditions is necessary, the one amounting to a command, and the other to an express condition, and that a violation in either case renders the legislation utterly void, why upon principle, shall not the same rule apply as to the third condition, or rather the second express condition? It is as if Congress had said to the States, Keep these conditions, and your power of taxing these shares is unlimited. Violate any of them in your taxation legislation, and the power is withdrawn, and all legislation containing a violation of any one of these conditions is *void*. This is the very essence of the letter and spirit of

the act of Congress and of all the decisions under it, and as we shall now more fully endeavor to show, is the effect of the last rulings upon the last condition. We proceed therefore to consider our next proposition, to-wit:

That the case of *Williams* vs. *Weaver*, properly understood, sustains our position here, and that the contention of learned counsel to the contrary is based upon the want of apprehension of the underlying principle upon which the ruling in that case is based resulting from difference in the facts in the two cases, and the manner or methods adopted to obtain relief therein.

To maintain the position that that case sustains this, and that under that ruling the Indiana statute is void as to taxation of National banks, we note [1.] that while the court does not say the New York statute is *void* in terms, the judgment contains the legal equivalent of this proposition.

When a Statute is in *conflict* with a Constitutional provision it is *void*, and is as worthless as blank paper. So where an ordinance is in *conflict* with the Municipal Act of Incorporation it is *void*. So here, the court say the New York Act of 1866 is in conflict with the Act of Congress. The *logical* sequence is, it is therefore void. [2.] This is the construction given by the *reporter*, in the head notes to the report. We call attention to the third proposition in the *Syllabus*, found in 10 Otto 539.

In that case the law of New York provided for the deduction of indebtedness from the value of all personal property. The Act of 1866 made a different provision for the taxation of National Banks, and which as the Court of Appeals held, cut off the right of exemption for debts of National Bank shareholders. Williams being an owner of shares but indebted in an amount equal to their value, and being taxed under the Act of 1866, for the full value of his shares applied for his exemption, and when

it was denied he sued out a *certiorari* under the laws of New York, which being decided against him the case was taken by writ of error to the Supreme Court, under the 25. section of the judiciary act.

Two questions were presentet in this court; First, whether the plaintiff in error was not entitled to his exemption, notwithstanding the Act of 1866; Second, whether if the exemption was cut off, the Act of 1866 was not in conflict with the Act of Congress. The affirmative of either of the questions would have resulted in a reversal. The court held the first question not a Federal question, and therefore concluded by the decision of the question in the negative by the Court of Appeals. But the Court answered the second question in the affirmative, and this resulted in a reversal of the case. One of two results may follow when the case goes back. If the legislation previous to 1866 affords any method of levying and collecting taxes on bank shares independently of the invalid Act of 1866, then the plaintiff in error may be allowed his exemption, and the levy itself, if sanctioned by the former acts, may be enforced as to the excess. But if like our statutes, those prior to 1866 contain no machinery for the enforcement of taxation against bank shares, consistent with the Act of Congress, the taxation of bank shares is at an end till further legislation. The Supreme Court does not discuss these matters because they were not before it. But these conclusions are inevitable.

Are not that case and this on all fours with each other? The complaint there was against exemptions from the value of other taxable moneyed capital which were denied bank shares. Here the complaint is precisely the same. The discrimination cannot be successfully denied, is not denied in the printed argument, and is of the same character as that complained of there was, as is expressly decided below. The question depended upon

the conflict between the New York Act of 1866, and the section of the Act of Congress; ours depends upon the question of conflict between our Act of 1872, and the same section. The court held that there was a conflict. We have shown that there is a conflict. The result there is unless former laws provide a method for taxing bank shares *without the odious* discrimination, that taxation of bank shares is at an end, till further legislation.

As there *is* no method under the Indiana Statute whereby bank shares can be taxed without an infringement of the Act of Congress, there must therefore be an end of taxation till further legislation.

The discrimination of which we complain is recognized by the Circuit Justice, but the effect is limited in the case at the bar.

Our inference from the ruling in *People vs. Weaver* is well endorsed by the Supreme Court, of Alabama, in the case of *Pollard vs. The State*, above referred to, for after pointing out the conflict of the Alabama Act with Section 5,214 of the Act of Congress, as construed by this court, in *People vs. Weaver* in two respects: (1.) In allowing the deduction of debts from taxable credits. (2.) In assessing both the shares and the real estate of the banks, the court proceeds:

"It follows then, that prior to the passage of the recent Act of the legislature, entitled: 'An act to provide for taxing shares of National banking association,' approved December 8th, 1880, there was no statute in this state under the provisions of which a valid assessment of taxes could be made on such shares, as tested by the case of *People vs. Weaver, Supra* and other decisions of the United States Supreme Court."

Thus deciding that a statute wanting in conformity to this section of the act is without force or virtue.

Independently of its invalid provisions our tax act does not show a very high degree of legislative

skill or wisdom. It is evidently a piece of patchwork, made up of incongruous, not to say contradictory provisions taken from the statutes of other states, without any apparent attempt to combine them into a harmonious system.

But confused, equivocal and inconsistent in many respects, it is consistent throughout in one direction, in the evident design to make the National Banks pay more than their share of the taxes. In all its meanderings it never deviates into fairness to them. The Legislature, with possibly this action as one of the exciting causes, has since made a revision of the taxation laws. There was doubtless in that body the ability and the will to devise measures by which National Banks will be compelled to contribute their full proportion of the revenues.

XI.

MISTAKEN ASSUMPTIONS OF COUNSEL FOR THE TREASURER IN SUPPORT OF THE RULING OF THE COURT BELOW.

It is assumed by counsel for the Treasurer, and in support of the ruling of the Circuit Court upon the single point decided against the bank, that the complainant's bill can only be sustained in behalf of such shareholders as have been deprived of the right of which the statute deprives them. This view seems to assume that the case at bar is brought for the purpose of invoking the supreme power of the Federal Court over the enforcement of laws of the State in conflict with the Federal constitution, and laws of Congress; and in this view, the case of Austin vs. The Alderman, 7. Wall, 694, is cited. This case came here upon error to the Supreme Court

of Massachusetts. The case is reported in 14. Allen, 359. The complaint in that Court was: 1. That the State has no constitutional authority to tax the National bank shares. 2. That the tax law of Massachusetts was void for want of conformity to the act of Congress, as to the place where the tax should be assessed, it being contended that the statute required the assessment to be made at the residence of the shareholder, without regard to the location of the bank. The court held that a fair construction of the statute made it conform to the act of Congress, and decided both points against the shareholder. It appeared, however, in the record of the case here, that the complaining shareholder lived in Boston, where the banks in which the shares he owned did business.

The case was here under the provisions of the 25. section of the judiciary act. The clause of that section embracing this case reads thus:

"Or where any title, right, privilege, or immunity is claimed under the constitution, or any treaty or statute of, or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed, either party, under such constitution, treaty, statute, commission, or authority, may be re-examined, and reversed or affirmed in the Supreme Court upon a writ of error."

After referring to the fact that the case comes here under this section of the act of Congress, Mr. Justice Swayne, delivering the opinion of the court, proceeds:

"The plaintiff in error lived in Boston, and was the owner of stock in six National banks there situated, and the valuation and assessments were there made.

"It is not denied that this was in conformity to the act of Congress, but it is insisted that the taxes assessed were illegal and void, because the statute of the State requires that they shall be assessed at the place of the residence of the shareholder, without reference to the locality of the bank.

The only question of Federal jurisdiction, and of which this Court can take cognizance is, whether the plaintiff in error has

been deprived of any right contrary to the act of Congress, upon which he relies for protection.

"The facts bring the case within the terms of the act, according to the strictest construction which can be given to them. This is conclusive of the case, whether, in another case, arising upon a different state of facts, the statute may not produce results in conflict with the act of Congress, and which this court will therefore be bound to correct and revise, is an inquiry upon which we are not called to enter. We can only consider the statute in connection with the case before us. Having ascertained that it has wrought no effect which the act forbids, our jurisdiction is at an end. The twenty-fifth section of the judiciary act is explicit upon the subject."

Thus showing that the case was distinguishable from cases coming here upon appeal or writ of error, from the Circuit Court, where judgment has been rendered in the Circuit Court, in the exercise of its ordinary jurisdiction which it possesses concurently with the State courts.

In the one case, this court exercises jurisdiction only in the protection of the rights of parties claiming the same under the constitution, laws or treaties of the United States from infringement by the State courts, while in the other it judicially determines all questions legitimately arising in the cases before it, just as the State court would.

The case at bar is one of the latter class.

The Circuit Court has jurisdiction of cases in suits and actions in favor of and against National banks, only concurrently with the State courts. And had we seen proper to bring this suit in the State court, and had obtained a judgment in our favor, the same questions we are discussing here, could not have reached this court. This being so, we are not here asking interference by, the highest judicial tribunal of the Federal Government, *as such*, in the exercise of its powers to prevent the violation of the constitution and laws of the United States, by the State Government, in the exercise of its taxing power. But we come into the Federal Circuit Court as we would have come into any

court of equity of general juisdiction, and ask the court: 1. To protect the complainant against multiplicity of suits, and vexatious and injurious litigations impending. 2. To protect the trust property of which the bank is trustee

In order to justify the application, we allege that the State law violates the provisons of the section of the act of Congress embracing three important particulars, which are enumerated, that these violations render the State statute void, and pray a perpetual injunction against the collection of the taxes for the particular year.

In drafting the blll which is full and ample, by way of mere amplification, and to enlarge the equity, but not as material or traversable allegations, it is alleged in the bill (1) that sundry of the complainant's shareholders are largely indebted for large sums and that they have no taxable credits from which their indebtedness can be deducted, whereby each shareholder are injured but no shareholders are named.

2. That there are many thousands of dollars invested in taxable credits from which large sums of debts are deducted under the law whereby large sums of moneyed capital invested in credits and money loaned are withdrawn from taxation, whereby the complainants are injured, directly, by being denied the same right and indirectly by depriving the aggregate of taxables and increasing the rate.

Although we did not regard these allegations essential, yet for the same reason that we inserted them, we proved them. Under the first we showed that the four shareholders representing about 20 per cent. of the capital stock had debts and no taxable credits from which to deduct them. Under the second averment we proved that two and a half millions of taxable credits Bills receivable, in the hands of six firms in the city were withdrawn from taxation by the deduction of debts.

The circuit justice delivered an opinion limiting the relief to the shares of the shareholders proved to be actually injured, and ordered a reference as to others. But while we might have proved most of the remainder of the shareholders in the same condition, as these four were, yet as this was not our theory of the law, we declined the reference and took a decree in accordance with the opinion, which upon this point alone was against us and from which alone we appeal.

The exact ground upon which the learned circuit justice based this part of his opinion and the decree is not stated. But we submit, for the reasons we have stated, that this part of the decree should be reversed. As we have already urged, the equity jurisdiction is not based upon the character of the shareholders or their rights, but upon the relations of the bank, and if the law is invalid and cannot be legally enforced, to have the court so declare, is the purpose of the bill, and, it is this judicial declaration which we ask here as we might have asked in the state court, and not the exercise of supervisory judicial control of a superior over a subordinate government. Hence, to declare such an of act the State Legislature void involves no delicacy which does not attach to such a judicial determination concerning an act of Congress, or to a like determinaion of the same question by the courts of the State of Indiana.

XII.

REASONS WHY THE PART OF THE DECREE INVOLVED IN THE CROSS APPEAL SHALL BE AFFIRMED.

The record shows here that the tax was levied, assessed and entered upon the tax duplicate against the bank alone (Rec. p. 24), and that the name

of no shareholder anywhere appeared upon the same. This duplicate is the collector's precept; he can enforce the same only upon the property assessed thereon, or belonging to the person taxed, and the whole tax is a lien upon the real estate. He has two methods of making his taxes by sale of the property. One by sale of the land, and the other by sale of the personal property of the tax-payer. His duty is to go to the tax-payer and demand personal property, and if he is not paid he may levy on personality. Whose personality could he levy on here? The shareholder's names appear upon the assessment papers, but nowhere upon the duplicate, and in order that a tax shall be charged against an individual so that it may be enforced against him by distress and sale his name must appear upon the duplicate, the treasurer can no more enforce this tax against a shareholder by distress and sale than could the sheriff enforce a *fi fa* against A by distress of the property of B. But the treasurer may sell the property of the bank for the tax on the shares under this assessment, and he was preparing to do so and would have done so but for the temporary injunction in the case (Rec. pp. 47–8), and had the real estate of the bank been sold, thus it would have made a stain upon the title of the bank. This being the case the perpetual injunction is clearly right, and the decree upon this point should be affirmed. It is not contended that the levy of the tax against the bank and the distress and sale of its property for the payment of the tax upon the shares, is authorized by the Act of Congress or the State Law. This being so, the attempt to sell the real estate is an unwarranted assumption of power, and constitutes such wanton violation of rights, with such consequences as in all courts of equity to justify an injunction, and the tax as the record shows is assessed upon the duplicate against the bank upon

$811,550 personal property (Original Rec. p. 44.) By the laws of Indiana, all taxes assessed against an owner of real estate are liens upon it, whether the tax be levied upon the real or personal property of the owner.—§ 169, *Supra*.

The deed upon the sale is made conclusive evidence of the facts therein recited.—§ 224 *Supra*.

One of the facts therein recited is that the taxes for which it was sold were legally assessed.

The assessment itself creates a cloud upon the title, and much more so would the threatened sale and a conveyance in pursuance of the same. In all such cases a court of equity will grant an injunction.—High, on Injunctions. § 367. § 368. Scofield vs. Lansing, 17 Mich. 437; Palmer vs. Rich, 12 Id., 414; Jenkins vs. Rock County, 15, Wis., 11; Susquehanna Bank vs. Supervisors, 25, N. Y., 31; Dow vs. The City of Chicago. *Supra*.

While the injunction thus granted is fully justified, yet this by no means disposes of the case, for part of the relief prayed in the bill, and which was fully justified, as we conceivd, by its allegations, was denied, and the bill as to this branch was dismissed. And this is the sole complaint. And we but repeat a point already sufficiently discussed, when we say that in order to have a full determination of the questions properly presented by the bill, the question as to the validity of the State law and the right of all the shareholders to exemption from taxation under it must be passed upon. The court below deemed the question duly presented and passed upon it, and we ask that the same may be done here. For it would afford no permanent relief, simply to sustain the decree for the perpetual injunction against the collection of the present tax by the means adopted, for this would be followed by an attempt at re-assessment, or an action by the treasurer against the bank for the taxes. Nothing but the determination of the validity of the State

law and its application to the whole of the shares of the bank, will settle the controversy, and this we humbly ask.

If it be said that the banks are seeking to avoid their just share of the burdens of taxation upon technical grounds, we answer these are not technical grounds, but grounds of the most substantial character. Indeed all the equiters are with the bank. The court will take judicial knowledge that this law has been in force for nine years, and the record shows the existence of the bank all this time, and the presumption is, and it is so alleged in the bill, that under this unjust, system the treasury has received of the bank over and above its just share of the burdens of the State Government more than twice the sum, the payment of which we now seek to avoid.

We respectfully and earnestly ask a reversal of the decree of the Circuit Court in the appeal and an affirmance in the cross appeal.

ALEX. GILCHRIST
CHARLES H. BUTERFIELD.
ASA IGLEHART,
J. E. IGLEHART,
Counsel for Evansville National Bank.

CIRCUIT COURT OF THE UNITED STATES,)
DISTRICT OF INDIANA.)

EVANSVILLE NATIONAL BANK, OF EVANSVILLE, INDIANA

VS.

THOMAS P. BRITTON, TRASURER, OF VANDERBURGH CO.

Mr. Justice Harlan delivered the following opinion:

The object of this suit is to obtain a perpetual injunction against the collection of state, county, road and school tax assessed in Vanderbnrgh county, Indiana, for the year 1879, upon the shares of complainant's stock, in the hands of its respective owners.

The suit proceeds upon the general ground that the revenue statute of this state, passed in 1872, and under the authority of which the assessment in question was made, is, as to certain provisions, in conflict with section 5,219 of the revised statutes of the United States, which permits, as did previous legislation, state taxation of national bank shares subject to two restrictions, one of which is, that such taxation "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state."

Some of the papers connected with the valuation of these shares indicate an assessment against the bank itself. But taking all the papers together, I am satisfied that the assessment was intended to be, not against the bank in its corporate capacity, but against the several shareholders upon the shares held by them respectively. Still, the right of the bank to institute the present suit cannot be questioned. The state law imposes upon bank officers the duty to retain, out of dividends, belonging to the respective share-holders, a sum sufficient to meet the taxes assessed upon their shares. Now the law further subjects the officer who pays dividends to a stockholder before the taxes

upon his shares are satisfied, to personal liability for such taxes. What was said in Cummings vs. National bank, 101, U. S. 157, may be repeated here: "The bank, as a corporation, is not liable for the tax, and occupies the position of a stakeholder, on whom the cost and trouble of litigation should not fall. If it pays, it may be subjected to a separate suit by each shareholder. If it refuses, it must either withhold dividends, and subject itself to litigation by doing so, or refuse to obey the law, and subject itself to a suit by the state. It holds a trust relation which authorizes a court of equity to see that it is protected in the exercise of the duties appertaining to it. To prevent multiplicity of suits, equity may interefere."

Passing this preliminary point, I come to the consideration of certain questions arising upon the merits, as to some of which I have had very great difficulty.

In People vs. Weaver, 100 U. S., 539, it was ruled that the inhibition upon state taxation of National bank shares "at a greater rate than is assessed upon upon other moneyed capital in the hands of individual citizens," had reference to the entire process of assessment, and prevented as well an unequal valuation of such shares, compared with other moneyed capital, as an unequal rate of percentage thereon. Consequently, a statute of New York which presented an uniform rate of taxation upon personal property, but permitted the tax-payer to deduct his just debts from the aggregate value of his personal property, other than bank-stock, (from the value of which latter property no such deduction was allowed) was held to work an illegal discrimination against moneyed capital invested in such shares, in favor of other moueyed capital. Such a mode of valuation—the supreme court of the United States held—had the effect to impose greater burdens upon moneyed capital invested in bank shares, than upon other moneyed capital.

In Pelton vs. National bank, 101, United States 146, the court said: "It is sufficient to say that we are quite satisfied that any system of assessment of taxes which exacts from the owner of the shares of national bank stock a larger sum in proportion to their actual value than it does from the owner of other moneyed capital, valued in like manner, does tax them at a greater rate within the meaning of the act of congress."

The fundamental inquiry, therefore, is whether the statutes of Indiana present any rule of taxation of moneyed capital, which necessarily conflicts, or which, in its application, may conflict with the act of congress permitting state taxation of National bank shares.

In the prosecution of this inquiry I have examined with great care the numerous and, in some respects, involved provisions of the act of 1872. My examination has been conducted in the

hope that I should be able to reconcile the state law, in all its parts, with the act of congress. But in that hope I have been disappointed. I am of the opinion that the state revenue act establishes a rule of taxation which, in its application to certain cases and under certain circumstances, may operate to subject National bank shares to greater burdens than the same act imposes upon other moneyed capital in the hands of individual citizens of Indiana. A very brief reference to the provisions of the state law will establish this proposition.

"The same law provides for the taxation of National bank shares in the hands of the respective owners, according to their fair cash or selling value. It excludes from the valuation of such shares any estimate whatever of the shareholder's debts. No allowance or deduction, on that account, is permitted, although his debts may exceed the value of his National bank stock, he must pay taxes on the cash value of that stock without any reference to the amount of such indebtedness.

Turning now to the general provisions of the State law, regulating the assessment and valuation of the personal property of individual citizens (other than bank shares,) I find that each tax-payer is required to list, among other things, his "credits." (1. Rev. St., Ind. 1876, pp. 75, 81. Secs. 15, 48.)

"Under that head is included 'money at interest, within or without the State.' To that effect, is the recent decision of the Supreme Court of this State. (Matter vs. Campbell, 71. Ind. 512.) He is not taxed for the full or fair cash value of such credits, but only upon the balance which may remain after deducting therefrom the amount of his *bona fide* indebtedness, including his proportionate liability as surety for others arising from the inability or insolvency of the principal debtor, and for which he believes himself to be legally and equitably bound, but excluding all acknowledgments of indebtedness, not founded on actual consummation or made for the purpose of being deducted. (1. R. S., Ind., p. 86, Secs. 53, 4; Matter vs. Campbell, 71. Ind., 512.) Plainly, therefore, money capital, represented by loans, or invested in "credits," is not taxed as money capital represented by National bank stock is taxed, viz: according to its fair value and without reference to the indebtedness of the tax payer. Only so much of a tax payer's credits is taxed as exceeds the amount of his *bona fide* indebtedness. A single illustration will show the operation of the State law in some cases: A, having $10,000 in money, owing debts to the amount of $6,000, and having no credits, invests that money in National bank stock. By the State law he is required to pay taxes upon the amount so invested, without deduction, in any form, of his indebtedness of $6,000. But if he should lend the $10,000 and take a note therefor, or if he should buy promissory notes with that money, thereby be-

coming owner of credits, he will not be required to pay taxes upon the money value of his credits, but only upon $4,000, the difference between his credits and his indebtedness.

"It is thus seen, that under the operation of the rule, presented by the State law, moneyed capital not invested in National bank shares, may be burdened with less taxation than the same amount of capital invested in such shares would be. Congress, in granting authority to the States to tax National bank shares, certainly did not intend to expose moneyed capital so invested to greater burdens than were imposed upon other moneyed capital in the hands of individual citizens. On the contrary, its purpose was for all purposes of local taxation, to place moneyed capital, represented by National bank shares, upon the same footing with the most favored moneyed capital in the hands of individual citizens of any State, exacting the power granted by Congress. Here the State law, by way of diminished taxation, accords to moneyed capital invested in credits, held by its citizens, privileges of a substantial character, which it denies to capital invested in National bank shares.

"The State law, in effect, holds out an inducement not to invest in National bank shares, but in 'credits.' It seems to me that that law enforces, in certain cases, a rate of taxation which is inconsistent with the principle of equality underlying the legislation of Congress, and conformity to which is essential to the validity of State taxation of National bank shares."

There are other grounds upon which the learned counsel of complainant assail the state law. It is contended that the shareholders are subjected to double taxation, as to the real estate of the bank, because, in addition to the taxation of the shares at their cash value, the bank was required to pay, and did pay, taxes for the same year upon the real estate used in its business. It is quite sufficient to say that the bank is not entitled to relief upon this ground, because it satisfactorily appears that, excluding the real estate of the bank, the shares are not asessed beyond their fair cash or selling value.

The objection that the state law makes a discrimination in favor of individuals and corporations (other than national banks) owning United States bonds and securities, is not, I think, well taken. If I do not misapprehend this objection, it rests upon the ground that the state does not impose taxes upon securities which the law exempts from taxation. In determining whether the state has made an improper discrimination against moneyed capital invested in national bank shares we must look to what it has done in reference to those kinds of moneyed capital over which it has complete control for all purposes of taxation.

I come now to inquire as to what extent relief can be given to complainant by reason of the ruling that the state law estab-

lished a principle which, in its operation, may injuriously affect the rights secured to shareholders in national banks by the acts of congress. I say may injuriously affect, because if the complainant's shareholders did not, at the time of the assessment in question, have any indebtedness to others, to be deducted from the value of their moneyed capital, in whatever shape that capital was, it is clear that neither they nor the bank as their representative, could properly invoke the judgment of the court as to the constitutionality of the state law, or obtain any injunction for protection of shareholders, who were not, in fact, injured by the assessment. In such a case the question would be wholly abstract, and the court would not consume time in its consideration. The bank I have already said, had a right to institute this suit for its protection, and for that purpose, to ascertain what shareholders had the right to dispute the validity of the assessment, and consequently to demand the full amount of their dividends, without any deduction for taxes assessed upon their shares. But the bill does not allege that all the shareholders were in a condition to complain of the assessment. It alleges only that "sundry" or "many" of them had indebtedness which the state law did not permit to be taken into account in the assessment, and valuation of the moneyed capital invested in national bank shares. The proof shows only four stockholders in that condition, viz: Samuel Bayard, Fred A. Preston, John D. Preston and David J. Mackey. This proof was, no doubt, made for the purpose of illustrating the practical operation of the state law.

In view of the rule established by the state law, I am of opinion that every shareholder or complainant, subject to taxation in this state upon his credits, and who, at the time of the assessment, had debts which were not deducted from his credits because he had none, and which were not deducted from the valuation of his bank shares because the state law would not permit that to be done, is entitled, through the complaint, to an injunction against the collection of a taxes assessed upon his shares for the year 1879. The decree can go no farther than that.

A few days since I addressed a letter to counsel authorizing a final decree to be entered perpetually enjoining the collection of all the taxes assessed upon the complainant's shares of stock for the year 1879. Further reflection satisfies me that such a decree should not be broader than above indicated. As the case has evidently not been prepared or defended upon the theory that the proof should show the condition of each shareholder, as to indebtedness, at time the assessment in question was made. In order that the parties may have a fair opportunity to make such proof the cause must go to a master to ascertain and report the facts.

VI.

Counsel will prepare the proper order of reference, indicated in the opinion of the court as far as herein disclosed. There are many details, connected with the convenience of counsel, which should be considered in framing the order. I leave counsel to agree upon such details. If they cannot do it I will receive from each side a draft of one and will adopt and have entered that one which meets my approval.

In the Supreme Court of the United States.

No. 1149.

THE EVANSVILLE NATIONAL BANK,
Of Evansville, Indiana, Appellant,
VS.
THOMAS P. BRITTON,
Appellee

No. 1156.

THOMAS P. BRITTON,
Appellant
VS.
THE EVANSVILLE NATIONAL BANK,
Of Evansville, Indiana, Appellee

BRIEF OF

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In the Supreme Court of the United States.

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THE EVANSVILLE NATIONAL BANK,
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THOMAS P. BRITTON,
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VS.

THE EVANSVILLE NATIONAL BANK,
Of Evansville, Indiana, Appellee.

ABSTRACT.

This was a Bill in Chancery to enjoin the collection of the State, County, Road and School Tax, levied, assessed and charged against complanant's share holds for the year 1879.

The averments in the Bill are essentially as follows.

That the complainant is a Banking Association, organized in the year 1865 under the Act of Congress of June 1864, that it has been located and doing business in said County since its organization, with a capital stock of $800,000, divided into 8000 shares, owned by 85 stockholders, residing in Evansville, New York and elswhere.

That by the Revenue Laws of Indiana passed in 1872, and still in force, the shares of capital stock

of any National Bank, are to be assessed to the owners and taxed at the same rate, and for the same purposes, as other personal property, in the same locality, without deduction; that by said law, the real and tangible personal property of said Bank embracing Complanant's real estate, worth $28,000, is taxed for its cash value; that no deduction can be made for said real estate, from the value of said shares.

That by said revenue law, the moneyed capital of individual citizens of said State, invested in the capital stock, and shares thereof of any corporation or association created under the laws of said State, the tangible property of which is assessed, is exempt from assessment and taxation.

That by said statute there is a discrimination against moneyed Capital invested in National Banks, and that invested in other corporations and other associations.

That by the revenue laws of Indiana all citizens are required to have assessed at their cash value, all moneys at interest within or without the State, and all demands against persons or bodies corporate, deducting therefrom their *bona fide* indebtedness the tax being levied on the remainder of said credits.

That millions of dollars in said County and State, sums larger than all the banking capital therein, are invested in such credits and demands, and a large number of the holders of such credits and demands are largely indebted and thereby obtained exemption from large sums of taxes.

That such credits and moneys at interest, form a large part if not almost the sole moneyed taxable capital held by citizens of said County and State, besides Bank shares.

Whereby the holders of shares of complainant's capital stock are compelled to pay a higher tax,

than do the citizens, whose money is invested in such credits and money at interest.

That sundry of complainant's shareholders are largely indebted and are not permitted to deduct said indebtedness from the value of their shares.

That on the 12th day of April 1879 $812,000, of complainant's means, represented by the shares held by complainant's stockholders, were invested in United States Bonds, held by the Comptroller of the Currency, and $50,000 held as assets, and $64,000 legal tender notes, making in all $926,000 which are by the constitution and laws of the United States, and by said State statutes, exempt from taxation, and if said Bonds and legal tenders were withdrawn, its shares would not be worth more than $20 each.

Said revenue laws do not provide for the deduction from the shares of National Banks, for any sum so invested in such bonds and legal tenders.

That by failure to make such provision complainant's shares are taxed at a greater rate than the moneyed capital of other citizens ,other than National Banks, as the capital invested in all other corporations of said State, especially the State Banks of which twenty are organized with a large capital of millions of dollars, where capital stock is taxed by said law, after deducting the amount invested, in government bonds and legal tender notes.

And the indebtedness of said Banks as well as many millions of dollars of moneyed capital, employed by private bankers and banking associations, subject to like deductions.

That by the methods of assessment and taxation, pointed out by said statute the shares of complainant's stock, are valued higher than other moneyed capital in this: that the shares must be appraised at their fair cash value and their tangible property, real and personal, is appraised separately, and the

amount can not be deducted from the value of said shares.

Whereas, the shares of all corporations other than National Banks, are exempt, to the extent of the value, of their tangible property, assessed for taxation.

That the shares of National Banks, including complainant's, are taxed at their cash value, the shareholders not being permitted to deduct from such value, his indebtedness, while the citizen having moneyed capital, invested in money at interest, or demands on persons or corporations, as well as State Banks, is permitted to deduct from such values, his indebtedness.

While the citizen having moneyed capital invested in money, at interest or demands on persons or corporations as well as State Banks, is permitted to deduct his debts from the value thereof and pay taxes upon the net balance, no provision is made by said statute to deduct from said valuation the value of his said United States Bonds or legal tender notes, which are exempt from taxation, and which represent more than 80 per cent. of the value of said shares.

Whereas, the moneyed capital of other citizens, invested in said bonds or legal tender notes or both, is by said state law and the federal laws and constitution exempt from taxation to the amount of the value of said bonds and legal tenders.

That said State statute is in conflict with the law of congress and is void.

That near the 1st day of May 1879 the County Auditor furnished complainant's cashier a blank report, and demanded that the same be filled, signed and delivered to him, which was done.

That it contained the names and residences of all of complainant's shareholders, No. of shares held by each, the par value thereof, amounting to $800,000

or $100 per share; and the fair cash value thereof, amounting to $800,000 or $100 per share.

That the Board of Equalization of said County, appraised and assessed the shares at $110,48¼ per share, or $811,550, for the whole.

That the Auditor placed said valuation upon the assessment roll and tax duplicate.

The value of complainant's real estate appraised at $28,430 added thereto; and the valuation of said shares making in all, entered in the total column $840,000.

That the Board of Commissioners having made the proper levy of taxes, upon all real and personal property, in said County, at $1.22 per $100, the Auditor extended and charged said aggregate per cent, making in all $10,248.

Whereby under said statute, said shareholders, are charged with said tax, in proportion to $1.23¾ per share on the aggregate sum of $9,900.91 assessed upon the shares of complainant's capital stock.

That complainant's real estate is charged upon said duplicate with $347.01 which it paid.

That the Auditor after entering and charging said tax to complainant, and compleing the said duplicate, delivered the same to the defendant, and now the treasurer of said County who was and is authorized to collect the taxes placed upon said duplicate.

That said taxes are due and payable before the 3d Monday in April 1880 and if not paid by that time will be subject to a penalty of 10 per cent. and that such taxes are payable by the owners of such shares.

That for the better security of the payment of said taxes they are made a lien upon such shares and the lien dates back to the 1st of April 1879 and takes precedence of all transfers. It is the duty of complainant by said statutes to retain so much of any

dividend as may be nessessary to pay such taxes: that said defendant is threatening to collect from said complainant or its shareholders said sum of $10,248 of taxes and if not restrained will proceed to collect the same by distress and sale of the property of said shareholders or of the complainant.

That the complainant paid $347.09 of taxes against its real estate; that the sum of $990.91 tax for the reasons already set forth is illegal.

That it has become a usage between the complainant and said stockholders for complainant to pay the taxes charged against said shares and deduct the same from the dividends accruing to said shareholders.

That a large number of said stockholders have refused to pay said taxes or to permit the plaintiff to pay them.

That complainant by reason of the premises will suffer a multiplicity of suits from said shareholders for its refusal to pay said dividends and therefore be mulcted in excessive cost and will suffer irreparable injury in its business.

That said illegal mode of assessment has already damaged the property of complainant $10,000.

That unless said State law is declared illegal and the authorities restrained from enforcing it, complainant will be yearly subjected to the evils above set forth and its funds arising for dividends seized by the defendant.

Complainant prays that until the final hearing defendant may be enjoined from the collection of said taxes. That upon the final hearing said State statute be declared illegal and that defendant may be perpetually enjoined from the collection of said taxes. R. p. p. 1 2 3 4 5 6 7

The defendant demurred to the bill which demurrer was overruled. R. p. 7 7 1

The defendant then by leave of Court filed his answer. R. p. p.

The answer of defendant is substantially as follows:

ABSTRACT OF ANSWER.

The answer admits the Complainant to be a Banking Association under the Act of Congress; that it has continuously done business in Evansville as stated in the bill, having a capital stock of $800,000, in 8,000 shares held by sundry stockholders residing in Evansville and elsewhere, in number about 85. That by the law of Indiana, now and for eight years last past shares of capital stock of National Banks in Indiana are, and have been assessed to the owners thereof, in the County, township, city or town in which such Banking association is located, and that such shares are required by said statute to be taxed for state, county and township purposes, at the same rate as other personal property in the same locality is taxed; and that the assessment is required to be made for the fair cash value of said shares of capital stock on the first day of April of each year. The answer denies that the real and tangible property of National banks is required to be taxed at its full cash value, and that no deduction can be made from the actual cash value of such shares for the value of such real and tangible property as alleged in the bill.

The answer denies that there is any discrimination against moneyed capital invested in National bank shares, or that the shares of National banks are subject to a double taxation by the laws of said State. The answer alleges that by the laws of said State, shares of National bank stock are required to be assessed and valued at their fair cash value for taxation; that in truth and in fact the shares of complainant's bank were assessed and valued at $105 on each share of $100 for the year 1879, and that at the time the said shares were so assessed, they were of the value of $125 for each share of $100, and were assessed below their fair cash value. That 8,000 shares of $100 each, were assessed $840,000, and that this assessment and valuation included all the real and personal property of said Bank. That the Auditor in placing the same on the tax duplicate placed the real estate of the complainant on said tax duplicate at $28,450, and personal property at $811,550, making the value of the shares $105, for each share of $100, and the aggregate value thereof $840,000.

The answer admits that every citizen is required by the law of said State to list and have assessed for taxation at their fair cash value all credits or money at interest within or without the

State as well as other demands against persons or bodies corporate within and without the State; but denies that from the aggregate of such credits, said citizen is allowed to deduct his *bona fide* indebtedness, and that the taxes for State and County purposes are levied on the remainder. The answer on the contrary avers that by said law no person, corporation or company is entitled to any deduction from the amount of any bonds, stock or money loaned, but that such deduction can only be made from demands against persons or bodies corporate, and that by the law the citizen is only allowed to deduct from demands against persons or bodies corporate such *bona fide* debts, and that the credits from which the citizen is allowed to deduct his *bona fide* indebtedness is not *moneyed capital* within the meaning of the Act of Congress authorizing the taxation of the shares of National bank stock. The answer admits that no provision is made for the deduction of U. S. bonds or legal tenders from the value of shares, but avers that by the Act of Congress said shares are taxable as personal property.

The answer avers that said shares were of the value of $125 each; that the Board of Equalization of said County assessed and valued said shares for taxation at $105 for each share of $100 making the aggregate assessed value of said 8,000 shares $840,000, that being less than the fair cash value of said shares. That the Auditor placed the same upon the tax duplicate of said County, placing the value of complainant's real estate in the proper column of real estate, $28,450; and placed upon said duplicate in the column of personal property the sum of $811,550, making the valuation of each share $105 on each $100 share of stock, or the aggregate value of said 8,000 shares $840,000.

The answer avers that the tax assessed and levied was on shares of stock valued at $105, on each share of $100, and that the real estate was placed by the Auditor on the duplicate in classifying, in the proper column at $28,450, and the balance as personal property of the value of $811,550, making the aggregate tax on the $840,000, $10,248, being at the rate of $1.22 for each $100, in value of said shares; and the answer denies that said shares were taxed at $1.23¾ for each $100, in value of said shares. The answer admits that defendant intends to collect said tax, unless enjoined. The answer avers generally that said shares are assessed at less than their fair value, and that they are assessed and valued at the same rate as other personal property in the same locality is assessed, valued and taxed. The answer admits that complainant has paid the sum of $347 09, but denies that the sum not yet paid, to-wit: $9,900 91, is illegal, but avers that the same is justly and lawfully due and owing. The answer denies every allegation of the bill not herein specially admitted or denied.

The evidence is set out in full in the printed copy of the

record filed in this case, and will be referred to in the argument as occasion requires.

Afterwards complainant's filed a supplimental bill which alleges that the Treasurer, Thomas P. Britton, has advertised the complainant's real estate for sale for the payment of taxes, assessed upon the shares of the Bank upon hearing before

Mr. JUSTICE HARLAN

at circuit a decree was rendered adjudicating:

1. That the defendant be perpetually enjoined from collecting the taxes upon the shares for the year 1879 by sale of complainant's property;

2. That the defendant be perpetually enjoined from collecting taxes upon the shares of Bayard, Mackey and the Prestons;

3. That the defendant pay the cost.

4. That the complainant's bill as to all the other releif prayed be dismissed.

From the first three of these adjudications defendant appeals and from the fourth the complainant appeals.

ASSIGNMENT OF ERRORS.

The defendant for assignment of errors upon the adjudication of said Circuit Court says:

The Court enjoined the sale of complainant's property for the satisfaction of the taxes of the shares. That the defendant be perpetually enjoined from collecting taxes upon the shares of Bayard, Mackey and the Prestons, and that the defendant pay the costs. When by virtue of the law of the land and under the bill and answer and the evidence said Circuit Court should have refused to enjoin the sale of complainant's property to pay the taxes of the shares—should have refused to perpetually enjoin the collection of taxes upon the shares of Bayard, Mackey and the Prestons, and should have decred

that complainant pay the costs, wherefore appellant prays a reversal of so much of said decree embraced in the assignment of errors.

ARGUMENT.

I.

It is assumed by learned counsel for the complainant that by the Tax Law of Indiana the shares of National Bank Stock are assessed and taxed at their "*full and fair*" cash value, and that the real and tangible property is taxed in addition thereto.

That the real and tangible property of the Bank represents in part the value of the shares and that no deduction from the value of the shares can be made of the real estate and tangible property. And that this makes a double taxation to the amount of the value of the real and tangible property of the bank.

We insist that the revenue law of Indiana fairly construed sustains no such assumption.

In discussing the law in this brief wherever reference is made to the statutes of Indiana we refer to the Sections and pages of a pamphlet containing all the revenue laws of Indiana, a copy of which is filed with this brief.

TAX LAWS OF INDIANA.

Sections 1, 3, 4 & 5, Pages 3 & 4, read as follows:

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana:* That all taxes for the support of the government of the State shall be assessed on polls, and on property, listed and valued in an equal and ratable proportion (except such stocks or other property as may be specially taxed) in the following manner, namely: The amount necessary and proper to be charged on each poll and on each hundred dollars' worth of property for State expenditures, and for school purposes, shall, from time to time be fixed by law; and the amount be charged on each poll and on each one hundred dollars' worth of property,

for County expenditures, shall be determined by the Board of County Commissioners at their annual meetings, in June.

SEC. 3. All real property within this State, and all personal property owned by persons residing in this State, whether it is in or out of this State, and all personal property within this State, owned by persons not residing within this State, subject to the exceptions hereinafter stated, shall be subject to taxation.

SEC. 4. The terms real "property," and "lands," wherever used in this act, shall be held to mean and include not only the land itself, whether laid out in town lots or otherwise, with all things contained therein, but also all buildings, structures and implements, trees and other fixtures of whatever kind thereon, and all rights and privileges belonging or in anywise appertaining thereto.

SEC 5. The terms "personal estate," and personal property," as used in this act, shall be construed to include all household furniture, goods, and chattels and effects, of whatever kind; all moneys on hand or on deposit, either within or without this State; all steamboats, sailing vessels, wharf-boats, barges, flat boats, canal boats or other craft, whether within or without this State; all money at interest; all bonds or stocks, whether of body politic or corporate; and all other credits or investment, whether within or without this State; the shares of stock of incorporated companies and associations, organized under any law of this State or the United States.

Section 1, provides that all property shall be listed and valued in an equal and ratable proportion.

Section 3, requires all property both real and personal within the State, (subject to exceptions thereafter made) to be subject to taxation.

Sections 4 and 5, define real (property) and (lands) and the terms personal estate and personal property. It will be seen by said sections that stocks and shares of incorporated Companies and Associations organized under any law of this State or the United States are classed as personal property.

Sections 12 and 13, pages 5 and 6.

SECTION 12. Personal property shall be valued as follows:

1. All personal property, except as herein otherwise directed, shall be valued at its fair cash value.

2. Every credit for a sum certain, payable either in money or labor, shall be valued at a fair cash value for the sum so payable; if for any article of property, or for labor or services of any kind, it shall be valued at the current price of such property, labor or service.

3. Annuities and royalties shall be valued at their then present total value.

4. The capital stock of all companies and associations now or hereafter created under the laws of this State, shall be so valued by the State Board of Equalization, as to ascertain and determine respectively, the fair cash value of such capital stock, including the franchise over and above the assessed value of the tangible property of such company or association. Said Board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as it may seem equitable and just; and such rules and principles, when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if it contained in this act, subject, however, to such change, alteration or amendment as may be found, from time to time, to be necessary by said Board: *Provided*, That in all cases where the tangible property or the capital stock of any such company or association is assesssed under this act, the shares of capital stock of any such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this State.

SEC. 13. Real property shall be valued as follows:

1. Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale.

2. Taxable leasehold estates shall be valued at such a price as they would bring at a fair, voluntary sale for cash.

3. When a building or structure is located on the right of way of any canal, railroad or other company leased or granted for a term of years to another, the same shall be valued at such a price as such building or structure and lease or grant would sell at a fair, voluntary sale for cash.

4. In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair, voluntary sale for cash.

Section 12, requires that all personal property (except as therein otherwise directed) be assessed at its fair cash value for taxation.

Section 13, requires that real estate shall be valued at its fair cash value estimated at the price it would bring at a fair voluntary sale.

The exceptions to the rule laid down in these sections, as to the valuation of real and personal property, whereby certain property is exempt from txaation and when the words *cash value* are not

used, can have no bearing on the question now under discussion, except as to shares of National Bank Stock.

Sections from 62 to 70 inclusive, pages 24, 25 and 26, Tax laws of Indiana, read as follows:

SEC. 62. The shares of capital stock in any bank located within this State, whether organized under the laws of this State or of the United States, shall be assessed to the owner thereof in the county, township, city or town where such bank or banking association is located, and shall be taxed at the same rate as other personal property in the same locality is taxed.

SEC. 63. Such stock shall be assessed with regard to its value on the first day of April, of the current year.

SEC. 64. The president or cashier of every bank or banking association contemplated by the 62d section of this act, shall make out, in addition to the other property required by this act to be listed, a statement under oath, showing the number of shares comprising the capital stock of such bank the name and residence of each stockholder, with the number of shares owned by such stockholders in such bank, the par and cash value of each of said shares, and also the par and cash value of the entire capital stock of said bank or banking association, on the first day of April, and shall deliver such statement to the County Auditor in the county wherein such bank or banking association is located, on or before the first day of May; and the County Auditor shall deliver to the proper Assessor a copy of such statement, and such capital stock shall thereupon be listed and assessed by the Assessor, and return thereof made in all respects the same as similar property belonging to other corporations and individuals, except that it shall be treated as personal property belonging to banks or banking associations, under the name and style of capital stock.

SEC. 65. Should any president or cashier of such bank or banking association fail to make and return said statement within the time aforesaid, the Auditor of the proper county shall summons the president and cashier of such bank or banking association to appear forthwith before him, with the books of said bank or banking association; and said Auditor is hereby empowered to compel the attendance of said officers in obedience to such summons, and to examine them under oath, and to make such investigations at the expense of such bank or banking association as may enable him to obtain the information provided for in the 64th section of this act.

SEC. 66. The County Auditor shall enter the valuation of such capital stock on the tax duplicate of the current year, and shall compute and expend (extend) taxes thereon the same as against the valuation of other property in the same locality.

SEC. 67. Taxes assessed upon such stock shall be paid by the owners or holders thereof, in the same manner, and under the same penalties that other individuals or corporations are required to pay taxes.

SEC. 68. It shall be the duty of every such bank, or the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes levied upon their shares of stock respectively, until it shall be made to appear to such bank, or its officers, that such taxes have been paid, and any officers of any such bank, who shall pay over or authorize the paying over of any such dividend or dividends, or any portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax.

SEC. 69. Taxes assessed upon shares of bank stock, in conformity with this act, shall be and remain a lien thereon till the payment of such tax, which lien shall attach on the first day of April of the current year, and shall in no wise be effected by any sale or transfer of such stock.

SEC. 70. Nothing in this act shall be so construed as to exempt from taxation for municipal purposes, the shares of capital stock of any bank or banking association organized under the laws of this State, or the United States; but all such shares of stock may be assessed and taxed for all purposes at the same rate as other personal property is assessed and taxed in the same locality.

Section 62, requires that the shares of National Bank Stock *shall be assessed to the owner where the bank is located, and shall be taxed at the same rate as other personal property in the same locality is taxed.*

Section 63, fixes the time when it shall be valued, on the 1st day of April in each year.

Section 64, requires the bank officers to make out a return under oath showing the number of shares of capital stock, the name and residence of each stockholder and the number of shares owned by each, the *par* and *cash* value of the shares,, the par and cash value of the entire Capital Stock, and to deliver such statement to the Auditor and the Auditor to deliver the same to the Assessor, and such capital stock shall be listed and assessed by the *Assessor in all respects the same a ssimilar property* belonging to other corporations and individuals,

except it shall be treated as personal property belonging to banks.

Section 65, provides that if the bank officers fail to make such return, then the Auditor may compel an examination of the books of the bank.

Section 66 provides that the Auditor shall enter the valuation of such capital stock on the tax duplicate and compute and extend the taxes thereon.

Section 67, provides that the tax assessed upon such stock shall be paid by the owner or holder of such shares.

Section 68 makes it the duty of the officers of the Bank to retain out of the dividends of each stockholder so much as may be necessary to pay the tax, and the bank officers failing to do this shall become liable for such taxes.

Section 69 makes the taxes a lien on the shares of stock.

Section 70 relates to the taxation of shares of National Bank stock by municipal corporations.

Section 1 requires all property to be listed and valued in an equal and ratable proportion—except stocks—that may be otherwise specially taxed.

Section 12 requires all personal property, with the exceptions therein stated, to be valued at its fair cash value.

Section 13 requires real estate to be valued at its fair cash value for taxation.

Section 62 requires the shares of National Bank stock to be taxed at the same rate as other personal property is taxed.

Section 64 requires these shares to be listed and assessed in all respects as similar personal property belonging to other corporations or individuals, except that it shall be treated as personal property.

Sections 1, 12 and 13 require real and personal property belonging to individuals and corporations, other than the shares of National Banks, to be listed and valued for taxation at their fair cash value.

Sections 62 and 64 require that the shares of National Bank stocks shall be listed, assessed and taxed as other personal property of corporations and individuals, except that all the property of National Banks shall be treated as personal property.

We see but one legal result to be reached as to the meaning of these sections, and that is, that all real estate and personal property are to be assessed at their fair cash value, including shares of National Bank stock.

But in assessing shares of National Bank stock such shares must be treated as personal property.

Now if the value of the shares depends upon the value of all the property of the bank of whatsoever kind the same may be, then all this property should be taken into consideration in estimating these shares; and these shares are assessed at their fair cash value.

This is the plain meaning of these sections, and a different construction would do violence both to the letter and spirit of the same.

The questions relating to the assessment of National Bank stock are fully discussed by Justice Dillon, in

St. Louis National Bank vs. Papin, reported in 3. Central Law Journal, 669, and

Thompson's National Bank cases 326, and we especially call the attention of the court to this case.

But suppose the meaning of these sections is not free from doubt and obscurity and may be susceptible of two interpretations, one of which will destroy the act and the other support it, the latter construction is to be adopted by the court.

Judge Dillon, Judge Treat concurring, states the law on this point as follows: "This principle is one which commends itself to the Federal Courts with great force. In all cases where they are called upon to expound and apply State legislation, and with more than ordinary persuasiveness and cogen-

cy in cases in which these courts are asked to overthrow the Revenue Law of the State."

St. Louis National Bank vs. Papin, reported 3 cent. Law Jour., 669, and

Thompson's National Bank cases 326.

II.

It is indirectly alleged in the bill of the complainant that the shares of stock of the complainant's bank are doubly taxed to the amount of the value of their real estate. This is denied by the answer, and it is further averred that such shares were assessed at $105, on each share of $100, and that at the time they were so assessed they were of the value of $125 for each share of $100. The evidence taken to sustain the truth of this averment is as follows:

Will Warren, R. pp., 40, 41 & 42 Shares worth at the time they were assessed and valued $125 for each share of $100.

A. A. Swope, fixed the value of the shares at $115 for each share of $100. R. p., 43.

Samuel G. Evans, R. pp., 43 & 44 shares of Evansville National Bank stock worth $115 for each share of $100.

S. P. Gillett, a witness introduced by the complainant, states that he sold to Samuel Bayard, President of complainant's bank, 75 shares at $108 for each share of $100. R. p. 45.

The evidence of Mr. Warren, Auditor of Vanderburgh County, is very clear and full, showing how the Board of Equalization ascertained the value of these shares. And we take it that the proof as in this case fixes their value at from $108 to $125 per share of $100. And these shares were assessed for taxation at $105 on each share of $100 less than the lowest estimate placed by any of the witnesses on their value, and this includes the value of the

shares with the value of the real estate and tangible property included in the valuation of the shares.

Now if the assumption of the complainant be true that the shares of the bank are required by the law of Indiana to be assessed at their fair cash value and the real estate which forms a part of the value of these shares to be assessed and added thereto, then the evidence in this case conclusively establishes the fact that the aggregate valuation of the shares and real estate was below the fair cash value of the shares at the time they were assessed.

If the complainant's shareholders have been deprived of no right guaranteed by the Act of Congress and are taxed below the fair cash value of their shares, then the law of the State, which, it *is* assumed, taxes both the shares and the real estate has in no way *injured* the complainant's shareholders. This places the complainant in the attitude of asking this court to relieve the shareholders of a legal and valid tax upon shares that are valued below their fair cash value for taxation because, as it is alleged, there is no power under the laws of Indiana to deduct the value of the real estate. The complainant asks the court to give a construction to the law of Indiana which will make it conflict with the law of Congress. Although this law of Indiana as interpreted by counsel for the bank has not been enforced, nor are the taxing officers of the State attempting to enforce that part of said law which it is claimed is in conflict with the laws of the United States, yet the entire tax on the shares is claimed to be illegal and void.

Before the court can declare this or any other State law in conflict with the law of Congress, a case must be made showing that some injury will be done or is threatened to the complainant, which deprives it of some right granted by the Act of Congress. And when this court has ascertained that the State law has wrought no effect which the Act

of Congress forbids, jurisdiction is at an end.
Austin vs. The Alderman, 7. Wallace, 694.

III.

The next objection made, is that the assessment is against the bank, and not against the individual shareholders, and the counsel for the bank in their Brief, filed in Circuit Court, on page 6, set out what they call the assessment, and say that "the assessments is in this rather surprising form:"

EVANSVILLE NATIONAL BANK.

Value of lots	$ 28,450
Value of personal property	811,550
Total value of taxables	$840,000

Record page 24 is referred to as containing the evidence of this assessment; but upon examination of record, page 24 we find instead of an assessment, a certified copy of the tax duplicate of Vanderburgh county for the year 1879.

And no such assessment is set out in the Brief; nor in fact any kind of assessment of the property or shares of the complainant's bank on page 24.

The assessment of the shares of complainant's bank was not made by the Auditor, and the Tax duplicate made by the Auditor is not the assessment.

On pages 38 and 39 of the Record, the defendant put in evidence a paper found to be a return of the assessor of Pigeon township, assessing the property of the Complainant's bank at $880,000; less value of real estate, $28,450.

On the back of this valuation by the assessor was written by order of the board of Equalization, "*Reduced*" $40,000. Record, page 40.

The statement required by section 69, Tax Law

of Indiana, page 25, was put in evidence by the defendant, and is found on Record pages 38,39 and 40 and is the return of the bank officers under oath as required by said section 64.

This statement gives the names of the stockholders, their place of residence, the number of shares held by each, and the par and estimated value of each share, on the 1st day of April, 1879.

The Auditor, Will Warren, testifies on page 38 of the Record; "This paper is the return of the Evansville National Bank as required in sections 62 and 64" except the endorsement on back, "assessed" at 105. July 11th, 1879" which was made at said date by order of said Board.

Here is an assessment by the Assessor, and here is an assessment by the board of Equalization, and if the assessor's valuation was not in due form, the Board had the right to supervise the assessment, and the Board did supervize it by fixing the value of the shares of each stockholder at $105. per share.

When the Board having before them the Bank's return, wrote, or caused to be written, on the back of that return "$105," it was equivalent to writing the name of each shareholder, the number of his shares and their value.

A certified copy of the order of the Board, made at the time of this assessment is found on page 41 of the Record.

That the court may understand more fully how these shares were valued, we give a part of the evidence of the Auditor, Will Warren, found in Record Pages 40, 41, 42.

Q. State if you were present as a member or the Board of Equalization, at the time the shares of the Evansville National Bank were assessed and valued by said Board, for taxation in June and July, 1879?

A. I was.

Q. State when the Board convened, and when it adjourned.

A. Convened June 2d, 1879, and adjourned July 11th, 1879.

Q. State how the valuation and assessment of the shares of the Evansville National Bank, were, during said meetings, made by said board?

A. The Assessor of Pigeon township, had returned the Evansville National Bank, at a hundred and ten dollars per share. The question of Bank taxation coming before the Board, the matter was thoroughly discussed, and after getting all the information bearing on the value of Bank stock by examination of witnesses and reports, the Board concluded the market value of the shares of the Evansville National Bank to be $125 per share. It was on motion, assessed at $105 per share, to conform as near as possible to the assessed value of other personal property in Vanderburgh county.

Question and answer objected to by solicitor for complainant, as incompetent.

Q. At the time of said valuation and assessment of the shares of stock of the Evansville National Bank, what was the fair cash value of each of said shares at Evansville, Indiana?

Question objected to by solicitor for complainant for incompetency.

A. $125 per share of $100.

Q. Please look at the paper now shown you and state what it is, and make it a part of your deposition marked *Exhibit C.*

STATE OF INDIANA. }
VANDERBURGH COUNTY, } SS.

JULY 11th, 1879. FRIDAY MORNING.

Board of Equalization of said County met pursuant to adjournment at the Court House, in Evansville, Indiana, at 10 o'clock a. m. when present A. A. Swope, J. Benninghof and George Peva, Commissioners. Will Warren, Auditor, and the following township assessors: Prince, Heldt, TePoll, Newman, Camp, McCutchin and Bauer.

Among other business transacted, it was, on motion, ordered that the Evansville National Bank be reduced in the sum of $40,000, being a reduction as returned by the Assessor of from $110 per share of stock, to $105 per share of stock.

I, Will Warren, Auditor, certify the above to be a true record of the order of the Board of Equalization in regard to the reduction of assessment of said bank stock.

[SEAL] Witness my hand and seal this December 9th, 1880

WILL WARREN, A. V. C.

A. It is a certified copy of the record of the Board of Equalization of said County, of July 11, 1879, when the shares of the Evansville National Bank were reduced from one hundred and ten dollars as returned by the assessor, to one hundred and five dollars per share as ordered by the Board at said date. I now file it as a part of my deposition marked *Exhibit C.*

Question and answer objected to as being incompetent.

Q. State how and why it is, that the value of real estate and personal property of the Evansville National Bank appears in different columns on the tax duplicate of Vanderburgh County for the year 1879, as shown by your certified copy of tax duplicate in this case, and why is the aggregate value of all the shares made in one entry upon the said duplicate?

Question objected to for incompetency by solicitors for complainant.

A. To conform to the forms of duplicate as provided by the State Auditor in Section 135. The taxables of the real estate and improvements of said bank were $28,450, carried in the column headed "Real Estate and Improvements." That amount taken from the aggregate stock of $105 per share, $840,000, left $811,450 to be taken to the column headed "Personal Property," and the two amounts, or $840,000 carried to the column headed "Total Valuation of Taxables."

Answer objected to because it is more palpably incompetent, if possible, than the question.

Q. State what difference, if any, the Board of Equalization made in the valuation and assessment of the shares of the stock in the Evansville National Bank, and the valuation and assessment of the shares of stock in corporations organized under the laws of the State of Indiana, valued and assessed at the same time?

Question objected to for incompetency by solicitors for complainant.

A. No difference. The Board endeavored to assess all personal property of whatsoever kind in the county alike, and no discrimination was made against the stock of the Evansville National Bank or any other Bank.

Q. State the manner in which the Board of Equalization arrived at the valuation and assessment of the shares of the Evansville National Bank, and the valuation and assessment of all other corporations then and there assessed—state fully?

Question objected to by solicitor for complainants for incompetency.

A. The Board of Equalization arrived at the value of all personal property assessed and valued for taxation by ascertaining its fair cash value as near as possiple, and for this purpose they examined witnesses and records, and sent for persons and examined them under oath. We took the Bank's own statements to the comptroller; examined persons supposed to be in position to know the value of Bank stock; and with all these facts before them the Board made the assessment as provided in Section 150, and which was, in the case of the Evansville National Bank, as we all believed, nearly twenty per cent. (20 per cent.) below its real market value at that time. I never bought or sold any of the stock of the Evansville National Bank.

Answer objected to by solicitor for complainant.

WILL WARREN.

The shares of stock of complainant's bank were not assessed above, but below their fair cash value. The evidence on the value of the shares taken by defendant fixes the value as follows:

Will Warren, Auditor, $125 on shares of $100. Record page 41.

A. A. Swope, County Commissioner, shares worth $115 per share. Record page 43.

Samuel G. Evans, merchant, $115. Record page 43.

S. P. Gillett, Complainant's witness, sold shares to the President of the Bank, at $108 per share. Record page 45.

This was all the evidence as to value, taken in the case, and fixes the fair cash value of these shares from $108 and $125 per share, and below their fair case value. About this there can be no doubt.

Again, the evidence conclusively shows that all

personal property, of whatever kind, in the county, was assessed alike, and that there was no discrimination against the shares of stock of the Evansville National Bank.

Will Warren's evidence, Record page 40, 41, 42.

A. A. Swope's evidence. Record page 43.

Much stress is laid by the counsel for the Bank on the form of the tax duplicate, and that the entries therein show a tax assessed and charged to the Bank and not to the shareholders. How and why the tax duplicate was made up in its present form, is explained by the Auditor, Will Warren, in his evidence, page 41 of the Record, which is as follows :

> To conform to the forms of duplicates as provided by the State Auditor in Section 135. The taxables of the real estate and improvements of said bank were $28,450, carried in the column headed "Real Estate and Improvements." That amount taken from the aggregate of stock at $105 per share, $840,000, left $811,450, to be taken to the column headed "Personal Property," and the two amounts, or $840,000, carried to the column headed "Total Valuation of Taxables."

This is the record as to the assessment of the shares of Complainant's Bank and it establishes:

1. That the shares of stock of Complainant's Bank were assessed (and where we use the word "assessed" we mean valued) at less than their fair cash value.

2. That these shares were assessed like all other personal property in Vanderburgh County ; and that no discrimination was made in the assessment against these shares.

If there has been an irregularity in the form of the entry in the tax duplicate, we insist there is no fatal legal defect that renders it void. Counsel for the Bank treat the tax duplicate as the assessment, and assuming it to be informal and irregular, declare the tax void.

The law on this question is very clearly stated by Judge Cooley in his work on Taxation as follows:

"The authority of a collector of taxes to collect, is his warrant."

"The duplicate is but a memorandum of the amount he is to collect from the parties therein named respectively.

Again, the same author says:

"It is elsewhere shown that valuation is in its nature a judicial act, and the assessors in making it are entitled to the customary protection which the law accords to officers exercising corresponding judicial functions. The party injured by these errors committed without fraud or malice, has in general only such remedy as the statute may afford him, *and in no proceeding is one to be heard who complains of a valuation which, however erroneous, charges him only with a just proportion of the tax.*"

(Cooly on Taxation, 288. 16, Gray, 38.

First National Bank vs. Douglass County. 3 Dillon's Reports, 330.

Reported T. B. cases, 268, 271.)

A tax will not be restrained on the ground merely that it is irregular or erroneous. Errors in the assessment do not render the tax void, nor as a general rule do they constitute any reason whatever against its being strictly enforced. In this the authorities are agreed.

Cooley on Taxation p. 541.

State Bank Cases 92 U. S. p. 575.

National Bank vs Kimball 103 U. S.—732.

High on In; 1 vol. 2nd Ed. Sec. 484, 485 and following, and 507.

St. Louis National Bank vs. Papin. 4 Dillon, 29.

First National Bank vs. Merideth, 44 Mo. 500.

It appears from these sections that while the shares are assessed to the shareholders at the value of $105. each, the Auditor has made his memorandum upon the duplicate, as required in sections 64 and 66.

This is done in order to fix the liability of the officers of the Bank, as provided in Section 68, and enable the Treasurer to collect the taxes as provided in said section.

Considering all these sections in connection, we conclude that the law has been substantially complied with by the Assessor, Board of Equalization and the Auditor.

IV.

Another objection urged against the validity of the tax law of Indiana is that the individual citizen and corporations organized under the laws of Indiana are allowed to deduct from certain credits specified debts, and that holders of bank shares of stock are allowed no such deduction from the value of their shares.

Sections 53, 54, 55 and 56, pages 22 and 23, Tax Law of Indiana, read as follows:

SEC. 53. In making up the amount of credits which any person is required to list for himself, or for any other person, company or corporation, he shall be entitled to deduct from the gross amount of credits the amount of all *bona fide* debts owing by such person, company or corporation, to any other person, company or corporation, for a consideration received; but no acknowledgment of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being deducted, shall be considered a debt in the meaning of this section; and so much only of liability, as surety for others, shall be deducted as the person making out the statement believes he is legally and equitably bound, and will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other sureties who are able to contribute, then only so much as the surety in whose behalf the statement is made will be bound to contribute: *Provided*, That nothing in this section shall be construed as to apply to any bank, company, or corporation exercising banking powers or privileges, or to authorize any deductions allowed by this section from the value of any other item of taxation than credits.

SEC. 54. No person, company, or corporation shall be enti-

tled to any deduction from the amount of any bonds, stock, or money loaned, or on account of any bond, note, or obligation, of any kind, given to any insurance company on account of premiums or policies, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to, or installment payable on the capital stock of any company, whether incorporated or unincorporated.

Sec. 55. In all cases where deductions are claimed from credits, the Assessor shall require that such deductions be verified by the oath of the person, officer, or agent claiming the same.

Sec. 56. The statement of deductions thus claimed, and so verified by affidavit, shall form a part of a statement or schedule provided by section 49, as therein set forth. And the Assessor shall preserve said schedule, and at the same time he makes return of the assessment books, shall file the same with the County Auditor, to be kept on file in his office, and shall be subject to the inspection of the officers charged with the execution of this law.

A careful examination of all these sections will be necessary to enable us to get at their exact meaning.

The Revenue Law of Indiana allows the citizens of the state and the corporations and associations organized under the laws of the state to deduct certain indebtedness from certain credits and prohibits the holder of shares of National Banks, deducting his indebtedness from the value of his shares of National Bank stock. It is insisted that this is a discrimination against such shares. The answer to this is found in the revenue laws of the state which taken all together makes no such discrimination.

Section 12, Page 5 of tax law already set out provides that personal property shall be assessed at its fair cash value, and the 4, subdivision of this section provides how the capital stock of all companies or associations now or hereafter created under the laws of this State shall be so valued by the Board of Equalization at the fair cash value of such capital stock including the franchise over and above the assessed value of the tangible property of such com-

pany or association. And the board shall adopt such rules and principles so as to get at the fair cash value of such stocks. To this then is a proviso that when the tangible property or the capital stock of the corporation is assessed then the shares of stock shall not be assessed. If we turn to section 57, we find the law for listing every bank (other than a National Bank), banker, broker or stockjobber, and the form of schedule or return required. The schedules put in evidence by the complainant in this case were made under the 4th clause of this 57. section. These schedules made a part of the evidence in this case by the complainant to be fully understood must be analyzed. Take the schedule of Woolen, Webb & Co., of Indianapolis, found at pages 25 and 26 of the record.

The 1st, 2d and 3d items must be assessed as money, and no deduction can be made therefrom.

The 4th item, bills receivable &c., from this amount must be deducted the amount of the 7th and 8th items deposits and accounts payable.

From the 5th item, bonds, stocks, &c., take the amount of bonds and securities that are exempt from taxation.

If the bonds exempt from taxation are taken out of item 5 of the credits and out of item 9 it will be seen that the only deductions that can be made will be the amount of deposits and accounts payable and this is taken from bills receivable &c. That is credits due and to become due to the banks.

This schedule and all others put in evidence by the complainant are required to be listed and returned under sections 12 and 57 above set out, and the proviso in the 4th clause of section 12 was intended to apply to every bank, banker, broker or stockjobber, and so prevent double taxation, the proviso forbids that when the tangible property or capital stock shall be assessed, then shares of capital stock shall not be assessed, for the very obvious

reason that if the capital stock is assessed that covers the entire property of the bank, and if the shares are assessed in addition thereto the property of the bank would be twice assessed, and if the tangible property is assessed this represents a part of the value of the capital stock and to that extent, there would be a double assessment.

If this banking company was organized under the National bank law the only difference in assessment would be in the bonds or securities held by the bank that are exempt from taxation. As against the bank organized under the State Law they are not taxed, nor is their value estimated for taxation. Now, if this were a National bank the bonds could not be taxed, but in valuing the shares of stock these bonds would be taken into the account in assessing the shares. This is the only difference in the assessment.

But nearly all corporations organized under the laws of Indiana are listed under section 59, and valued by the Board of Equalization under section 1, page 103, Tax Laws of Indiana, and said section 12.

It is apparent that the law requires that these organizations named in section 59 are intended to be taxed on their capital stock, and further that the law intends that the valuation shall be at the fair cash value of the capital stock including the value of the franchise over and above the assessed value of the tangible property, and in both these sections, 57 and 59, the real estate and tangible property are to be assessed as other real estate and personal property are assessed. The same difference as to bonds and other securities exists as between these corporations and the assessment of National bank shares as under section 57.

The only difference in the valuation of the property of these corporations, that is, National banks and the property of individual citizens, is this: Bonds and securities exempt from taxation in the hands of

individuals or State corporations under the laws of the State are not taxed nor is their value estimated in assessing their property. While bonds and securities exempt from taxation are not taxable in the hands of National banks, yet in assessing the value of shares of stock in National banks the value of these bonds and securities are estimated in fixing the value of the shares.

This question, however, will be more fully discussed hereafter.

V.

It is insisted by the counsel for the bank in this case that the assessment on the shares of stock of the bank is at a greater rate than that of the personal property of the individual citizen, corporations, associations and companies, organized under the laws of Indiana in this: that allowance is made on account of United States securities held and owned by them, while at the same time no deduction is allowed in assessing the value of the shares of the bank.

In Van Allen vs. the Assessor, 3. Wallace 573 the court say: "The defect is this; one of the limitations in the Act of Congress is, that the tax so imposed under the laws of any State upon the shares of the associations authorized by this act shall not exceed the rate imposed upon the shares of any of the banks organized under the authority of the State where such association is located. The enabling act of the State contains no such limitation. The banks of the State are taxed upon their capital and although the act provided that the tax on the shares of the National banks shall not exceed the par value yet, in as much as the capital of the State banks may consist of bonds of the United States, which are exempt from State taxation, it is easy to see that this tax on the capital is not an equivalent for a tax on the shares of the stockholders."

This question was decided under that provision of the law of the United States requiring that the shares of National bank stock should not be taxed at a greater rate than the Banks of the State were taxed and that to tax the capital stock of the State banks was not equivalent to a tax on these shares.

In the people vs the Commissioners, 4 Wallace 244, the court after referring to the taxation of shares of National banks say: "It is argued that the assessment upon the shares of the relator is at a greater rate than that of the personal property of individual citizens, upon the ground that allowance was made on account of United States securities held and owned by them, when at the same time the deduction was disallowed to him. * * *

"The objection is a singular one—at the time Congress enacted this rule as a limitation against discrimination, it was well known to that body that these securities in the hands of the citizens were exempt from taxation. It had been so held by this court, and for abundant caution had passed into a law."

"The argument founded on the objection if it proves anything proves that these securities should have been taxed in the hands of individuals to equalize the taxation, and hence that Congress by this clause in the proviso intended to subject them as thus situated to taxation, and therefore there was error in the deduction. This we do not suppose is claimed, but it this is not the result of the argument then the other conclusion from it is that Congress required that the Commissioners should deduct the securities and at the same time intended the deduction if made should operate as a violation of the rate of the tax prescribed. We dissent from both conclusions and think a sound construction of the clause and one consistent with its words and intent is also consistent with all the Acts of Congress on the subject:"

The point was raised and the same ruling was made in this case that an Insurance Company organized under the laws of the State of New York had made a like deduction.

In the case of Lionberger vs. Rouse, 9 Wallace 468, This question was again before the court and the same ruling made, and this further question raised on the meaning of the word "bank," in the Act of Congress allowing shares of National bank stock to be taxed by the State. The court in construing the meaning of the word "bank," in the proviso of the 41st section of the Act of Congress of June 3, 1864, (13 statutes at large 111) says: "To ascertain the sense in which the word "bank" is used in the proviso to this section, it is necessary to recur to the mischief which Congress desired to guard against. The National banks were established to provide a National currency at a time when the State banks furnished the entire paper circulation of the country. In providing a system by which the States where National banks were located and did business, could tax their shares, it was important as their notes came in competition with State bank paper, that there should be no unfavorable discrimination against them. It was easy to see that an unfriendly State could legislate so as to drive them out of circulation and this consideration induced Congress to limit the State power of taxation in two particulars. In declaring that National bank shares should be taxed like other moneyed capital, and that no burdens should be imposed on them from which State banks were exempt, all was done that the necessity of the case required There was nothing to fear from banks of discount and deposit merely, for in no event could they work any displacement of National bank circulation. *It seems therefore clear that the proviso of the 41st Section was meant by Congress to apply to banks of issue.*"

"The changed condition of the banking interests

of the country has been the occasion of further legislation by Congress on the subject, and that now the power of State taxation over the shares of National banks is subject only to the restriction that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens; 15 statutes at large page 34."

The case of Van Allen vs. the Assessors, *Supra*, and the case of Bradley vs. the people, 4. Wallace, following the case of Van Allen vs. the Assessors, were decided under that clause of the Act of Congress which required: "That the tax so imposed under the laws of any States upon the shares of the Associations authorized by this act shall not exceed the rate imposed upon the shares of any of the banks organized under the authority of the State where such Association is located." As this clause is not now in the law of Congress, but left out in the revision of the act of Congress authorizing the taxation by the States, of shares of National bank stock, these decisions are no longer applicable to the changed condition of the law. And a State law authorizing the taxation of the capital stock of State banks of issue and the shares of stock of National banks would be a valid law, for the only clause which required the shares of State banks of issue to be assessed upon the value of their shares is no longer in force. And it is competent now for the States to tax, not only the banks of issue but all corporations, companies or associations, organized under the laws of a State upon their capital stock, and to tax shares of National bank stock, under the law as it now is. This would not be a discrimination against National banks. In fact there never was a time that it was a discrimination except as to State banks of issue.

Another branch of the same question just discussed, is: Is it a discrimination against the shares of National bank stock to allow the individnal citi-

zen to deduct from certain limited credits, certain limited bona fide debts as the citizen may do under the laws of Indiana?

Still, as before stated, it is a very inconsequential amount of the value of the property, real and personal upon which taxes are levied in Indiana. What the amount of such credits may be, or what the amount of the bona fide debts allowed under the law, to be deducted within the state of Indiana, is not susceptible of proof, nor can the amount be definitely ascertained.

An opinion that may approximate the amount compared with the entire taxable property may be formed.

Almost all citizens have more or less money due them in notes and accounts, and nearly all are more or less indebted. But it may be safely said, that the debts owing by the citizens of the State bear no comparison in amount with the value of the real and personal property owned by them. And it may be safely said, that of all that class of citizens who loan money have but few debts. It is not reasonable to suppose that the citizen who loans his money will involve himself. For instead of making a debt he calls in his loaned money and uses that to avoid debts. This, it may be said, is the general rule.

Nor is it possible to estimate the value of property, real or personal, from which no deductions can be made in listing for taxation. The aggregate sum we know to be very great; to estimate it is impossible. First there is the real estate, and chattels real, amounting to many millions of dollars more than all other property in the State. The owners of this real estate, if they were indebted for all of it, could not deduct their indebtedness from its value.

Second—All tangible, personal property, including farm products, live stock, agricultural implements, &c., although the owner may be in debt for it all, no deduction can be made from its value for

any *bona fide* debt owing.

Third—All railroad and street car stocks owned by the citizens of this state are in the same condition. All bonds of every kind and description, except government bonds, all monies, except legal tender notes, all stocks of companies, corporations or associations of every kind, organized under the laws of this State, and held by the citizens of this State, such as banking, bridge, express, ferry, gravel road, gas, insurance, manufacturing, mining, plank road, savings bank, stage, steamboat, street railroad transportation, turnpike, &c., are in the same condition and no deductions can be made from the value of such stocks or property by the citizens for their individual indebtedness. All personal property held by any citizen as partnership property, no deduction can be made by one partner for his individual debt, from credits belonging to the partnership.

The citizen must list his individual credits, and from these individual credits he can only deduct his individual indebtedness.

The partners must list their partnership credits, and from the partnership credits no individual debts can be deducted.

In listing and valuing the property of corporations referred to in Section 57, the listing and assessment is in all respects the same as the listing and assessment of the individual citizen of his individual property. The corporation lists its property, including its credits and debts, and from the credits the debts are deducted the same as the individual citizen deducts his indebtedness. These are the companies and associations referred to in the proviso to the fourth clause of the twelfth section of the tax law.

It is there provided that where the tangible property or the capital stock is assessed, then the shares shall not be assessed and valued for taxation; and it will be observed that all the schedules put in evi-

dence by the complainant in this case, are the schedules of companies or associations required to be listed under the fifty-seventh section.

The theory of the counsel for the bank as to the practical working of this act, found in their brief pled in the circuit court on pages 13 and 14, is a very remarkable one, and probably deserves a passing notice.

The testimony of Samuel Bayard, President of the Bank, is attempted to be given, showing the condition of Complainant's Bank on the 1st day of April, 1879, and from this evidence it is claimed that the net assets of the Bank are only $656,230 98, and that as we cross-examined this witness, it is our evidence.

Then a comparison with the schedules put in evidence by Complainant, of Woolen, Webb & Co., and five other banking companies, their schedules being set out in the Record on pages from 25 to 34 inclusive.

These schedules embrace the statements of the six Banking associations. By them it is attempted to be shown that the aggregate of bills discounted amount to $2,557,299 39, and under Section 57, all these Banks in their aggregate return for taxation $266,575 63, while the Evansville National Bank, with bills receivable amounting to $972,229 38 pays taxes on $811,550. It is then stated "that no data are furnished from which to estimate the capital of the State Banks and it is safe to assume that on the average the amount of capital invested is in proportion to the business done." By this showing, the counsel for the bank say: that the Complainant's Bank is assessed for more than ten times the amount of State Banks in proportion to the capital invested.

It is gravely assumed that there is no data from which to estimate the capital invested in these banks. All counsel had to do, to ascertain the amount of

capital in these six banks, was to look at their schedule, copies of which are in evidence, showing everything these companies had, including capital. It is not to this that we desire to call the attention of the Court, but to the many errors and conclusions drawn from these figures. The bills receivable are given, and the amount returned for taxation.

The testimony of Samuel Bayard, as to the condition of the Evansville National Bank, found on pages 16, 17, 18 and 19 of the Record, is substantially as follows:

ASSETS.

U. S. Bonds		$ 862 000 00
Legal Tender Notes		64,940 00
Money in Bank		41,922 66
Bills Receivable		971,229 38
Personal Property		4,200 00
Reserve or Surplus fund Equal to 20 per cent. of Capital Stock		160,000 00
Undivided Profits		29,093 98
There was no proof as to the value of the U. S. Bonds, but it is safe to say that they were worth 6 per cent. premium, making in addition to the face value of the Bonds		51,720 00
Total value of assets		$2,185,106 02
From this amount deduct the following 10 per cent. from Bills Receivable	$ 97,222 93	
Deposits	552,501 47	
Circulation Outstanding	638,500 00	$1,288 284 30
Leaving Total Assets		$ 896,821 72
And not as stated		656,230 00

But the defendant did not rely on the evidence of Mr. Bayard, for the value of the stock but proved its value by reliable and disinterested witnesses.

Again, the aggregate bills receivable of these six banks, are set down at $2,557,299 50.
and the amount they pay taxes on 266,575 63.
Then it is stated that the Evansville National Bank holding discounted paper to the am't of $972,229.38
is assessed for $811,550.00
We do not see what is to be accomplished by placing these figures, and adding them together, in the way we find them in this brief.

The tax laws of Indiana, as we have before shown,

allow no deduction for debt, on the 1st, 2d and 3d items of the schedule, and nothing is deducted from the fourth item except the amount of bonds or other securies exempt by law from taxation.

The aggregate amount of deposits of these six banks as shown by their schedules, foots up $3,007,017.96
and their deposits amount to 2,557,299.39

Making their deposits more than their bills receivable, $ 449,718.57

In addition to this the bonds and other securities of the United States, held by these six banks on the 1st day of April, 1879, amounted to $619,450. These bonds and securities are not taxable.

The shares of the Evansville National Bank were assessed on the same principle as these banks, except as to the bonds and other securities exempt by law from taxation, and with this further exception, that all the property real and personal of said National bank is treated as personal property, and the deductions for debts are taken from the whole amount of the assets.

This the State Banks cannot do for their real and tangible personal property are taxed at a fair cash value; and in valuing the property of these State banks, no deduction can be made from real property or tangible personal property or for moneys, stocks, or bonds, other than United States Bonds or securities.

Would it be just to the citizens to tax the shares of National Banks at their fair cash value, and at the same time tax the individual citizen on all his property, real and personal, for what that property is worth?

Take the shares of the Evansville National Bank. Its assets amount to about $2,100,000. which is more than double the aggregate amount of its shares, and it is assessed at $840,000. This reduction is made by taking from the assets the amount of its debts.

Take the case of an individual citizen engaged

in merchandising or manufacturing, and say his assets amount to $100,000. If these assets are valued at their fair cash value it amounts to $100,000. Now suppose this citizen is indebted in the sum of $50,000, he is in fact worth but $50,000, and if no deductions can be made, he is taxed on his assets amounting to $100,000, just double that of the shares of National bank stock, thus giving shares of bank stock the advantage over any citizen who may be in debt, except the limited credits from which he may deduct debts provided for by law. The bank shares are taxed upon what they are worth, the citizen upon all he has.

This mode of assessing all that a citizen owns at its fair cash value without regard to what he owes, and assessing National Bank shares by valuing the assets of the bank and deducting liabilities and then dividing the remainder by the number of shares, works a very great discrimination against the individual citizen, and in favor of the shares of National bank stock.

In this case more than one-half of the assets of the Evansville National Bank are not taxed, while every dollar of the individual citizen's property is assessed and taxed, subject to the credits, from which deductions are made by the law, and the same injustice is done to State corporations under the same system of valuation.

Take a corporation organized under the laws of this State, engaged in manufacturing, and assess all its real and tangible personal property, all its bills receivable, all its money, in fact, everything belonging to the corporation, and allow deductions from this amount for bills payable, we believe that it may be said with absolute certainty that these corporations would pay in taxes at least one-third more than the actual value of their stock or shares of capital stock.

We contend then that after a careful examination

of the Revenue Law of Indiana, that it is apparent that the Legislature in enacting this tax law, attempted to equalize the taxes so as to let the burden fall upon all property alike, with the exception of that which is exempt

Perfect equality of taxation cannot be attained. Judge Cooley lays down the rule that: "No single tax can be apportioned so as to be exactly just, and any combination of taxes is likely in individual cases to increase instead of diminishing the inequality.

Theoretically, tax laws should be framed with a view to apportioning the burdens of governments so that each person enjoying a government protection shall be required to contribute so much as his reasonable proportion, and no more.

The Tax Law that comes nearest to accomplishing this, is, in theory, the *most perfect*.—Cooley on Taxation, page 124.

"Perfect equality in the assessment of taxes is unattainable; approximation to it is all that can be had."

Commonwealth vs. Savings Bank, 5 Allen, 426. 436.

"Equality can never be but approximation."

Allen vs. Owen 44, Vt., 174, 186.

"Absolute equality in taxation can never be attained."

"That system is best which comes nearest to it."

"The same rules cannot be applied to the listing and valuation of all kinds of property.

Railroads, banks, partnership, manufacturing associations, telegraph companies, and each one of the numerous other agencies of business which the inventions of the age are constantly bringing into existence, require different machinery for the purpose of their taxation."

Tappan, Collector, vs. Merchants National Bank, 19, Wallace, 490.

State Railroad tax cases, 92, U. S. 575.

National Bank vs. Kimball, 103, U. S. 732.

If there is any inequality in the taxes imposed on property in Indiana, the inequality is not against the shares of National bank stock, but the discrimination is against the citizen and associations organized under the State Law.

The only exception to this is as to United States Bonds and Legal Tender notes which we will now consider.

VI.

Another reason assigned in the bill that the tax is invalid, is that eighty per cent. of the value of such National bank stock, is represented by United States bonds and Legal Tenders, which, by the Act of Congress, can not be taxed.

The law does not assess the bonds and Legal Tenders, but the bank shares. In making up the value of such shares, the value of the United States securities owned by the bank, are taken into account in assessing them. The law of Congress expressly gives this right to the States, and that the States have the power to levy a tax on the shares, and include the Government securities held by such banks, in estimating their value, has been repeatedly decided by the Supreme Court of the United States.

Van Allen vs. The Assessors, 3 Wall 573.

National Bank vs. Commonwealth, 9 Wall. 353.

Lionberger vs. Rouse, 9 Wallace 468.

Another question is raised by counsel for the bank, that the tax law of Indiana is void, for the reason that individual citizens and corporations organized under the laws of the State are not assessed on United States securities, while a tax is assessed on shares of National banks, the capital of which is invested in United States Securities.

The answer to this question is found in

People vs. Commissioners, 4 Wall. 244.

Lionberger vs. Rouse, 9 Wall. 468.

The deductions for indebtedness from credits allowed to the citizens as well as companies and associations organized under the State law, by the Tax Law of Indiana is but partial and limited—is in effect an exemption, to the amount of the debts deducted.

This was evidently intended to prevent a double burden by the taxation of both the property and the debts of the citizen as well as companies and associations organized under the State law.

Hepburn vs. the School Directors. 23 Wallace 480.

Lionberger, vs. Rouse, 9 Wallace 468.

People vs. Commissioners 4, Wallace 244.

Adams vs. Mayor of Nashville, 16 Albany Law Journal 416.

In the case of Adams vs. Mayor it is said by the court:

"The Act of Congress was not intended to curtail the State power on the subject of taxation. It simply required that capital invested in National Banks should not be taxed at a greater rate than like property similarly invested.

"It was not intended to cut off the power to exempt particular kinds of property, if the Legislature chose to do so.

* * * The discretionary power of the Legislature of the States over all these subjects remains as it was before the Act of Congress of June 1864.

"The plain intention of that Statute was to protect the corporations formed under its authority from an unfriendly discrimination against them of the power of State taxation.

That particular persons or particular articles are relieved from taxation is not a matter to which either class can object."

Chief Justice Waite, in Hepburn vs. School Director, says:

"In support of this claim that all mortgages, judgments, recognizances and moneys owing upon articles of agreement for the sale of real estate are exempt from taxation in that Borough except for State purposes. This is a partial exemption only. It was evidently intended to prevent a double burden by the taxation both of property and the debts secured upon it. Necessarily there may be other moneyed capital in the locality than such as is exempt. It could not have been the intention of Congress to exempt Bank Shares from taxation because some moneyed capital was exempt."

The averment in the answer that the credits from which deductions for indebtedness are permitted, it seems to us, by these authorities, are not moneyed capital within the meaning of the Act of Congress. Besides the amount of credits from which deductions can be made in any view of the law, is inconsequential as compared with the vast amount of moneyed capital from which no deduction is allowed.

Much stress is laid upon, and extensive citations made from, the case of the City National Bank vs. Paducah, reported in Thompson's National Bank cases, p. 300. This case, decided by Justice Brown, it is assumed was under a statute similar to the Indiana statute. An examination of the case will show a very marked difference between the law of Kentucky and the charter of Paducah, in the rule of assessment of property subject to taxation, and that of the tax law of Indiana. Justice Brown, on pp. 309 and 310, gives a very clear summary of the law of Kentucky and that of Paducah, and says:

1. Real estate; 2, horses, mules, and the like; 3, cattle 4. watches, plate, clocks, pianos, vehicles and harness; 5. "The Assessor, after having taken the lists of all property required to to be taken, listed as above, shall require each person on oath to fix the amount he or she is worth from all other sources on the day to which said list relates, after taking out his or her in-

debtedness from said amount; and the said assessor shall take from the said amount, the sum of one hundred dollars, and the balance for taxation. This section includes all property not exempt or previously mentioned, such as spirituous liquors, the produce of mines, farms, forests, manufactures, notes, accounts, bonds, bills of exchange and choses in action, debts and demands of every kind, but does not include bank stock."

We give this extract from the opinion of the court, for the purpose of showing that the amount of property from which debts are deducted is very great, embracing a very large part of the taxable property of Kentucky; and that no attempt was made by the Kentucky Legislature or the city of Paducah, to equalize taxation so as to let the burden fall upon all property alike, while under the tax law of Indiana, limited debts only, are deducted from certain limited credits, and the credits from which deductions may be made for debts, is but an inconsequential part or the taxable property of Indiana. And we have in this argument as we believe, established that this was absolutely necessary to limit to some extent the discrimination in favor of shares of National Bank stock, and to equalize taxation so as to place something like an equal burden upon all property subject to taxation.

The case of The People vs. Weaver, 10. U. S., 539, is said to be decisive in this case. It is admitted that under the New York law, the right existed to deduct indebtedness from assessments of personal property except shares of banks and the capital of individual bankers. This makes a discrimination against the shares, giving no ground for doubtful construction; while in this case the most that can be said is, that the Indiana tax law is not as carefully and skillfully worded and connected as it might be, that there may be vagueness in some of its provisions, and even apparent contradiction; yet a careful reading of all, with a fair construction of the different sections leads to but one conclusion, and that is, that

the Legislature intended to tax all property alike, including shares of National Bank stock. But, as we insist in this argument, the tax law of Indiana is to be upheld and enforced unless the court is satisfied beyond doubt that it is in conflict with the law of Congress.

The Bill in this case was doubtless prepared under the mistaken theory that People vs. Weaver 100, U. S. 539, warranted such construction.

We do not so understand it.

The laws of the State of New York, by virtue of which the assessment was made in that case, differs materially from the Revenue laws of Indiana. The former statute, making an unmistakable discrimination against National bank shares, the latter declaring "That shares of capital stock in any bank located within this State, whether organized under the laws of this State or of the United States shall be assessed to the owner thereof, in the county, township, city or town where such bank or banking association is located, and shall be taxed at the same rate as other personal property in the same locality is taxed."

The law of the State of New York, for taxation in the county of Albany, enacted in the year 1850, contained the following section:

"SECTION 9. If any person shall at any time before the assessors shall have completed their assessments, make affidavit that the value of his real estate does not exceed a certain sum to be specified in such affidavit, or that the value of the personal estate owned by him, after deducting his just debts and his property invested in the stock of any corporation or association liable to be taxed therefor, does not exceed a certain sum, to be specified in the affidavit, it shall be the duty of the Board of Assessors to value such real and personal estate, or both, as the case may be, at the sum specified in such affidavit and no more."

It will be readily seen by the law above quoted that every citizen tax-payer was, by provision of such law, allowed to deduct from any property which he owned, any debts which he owed, and thus relieve himself from taxation by making the required affidavit.

In the year 1866 another tax law was passed, as follows:

"SECTION 1. No tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of the State or of the United States; but the stock-holders in such banks and banking associations shall be assessed or taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of each stock-holder in the assessment of taxes at the place, town or ward where such bank or banking association is located, and not elsewhere, whether the said stock-holder reside in said place, town or ward or not, but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals in this State. And, in making such assessment there also shall be deducted from the value or such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank or banking association, and in which any portion of their capital is invested, in which paid shares are held, to the whole amount of the capital stock of said bank or banking association. And prescribed further, that nothing herein contained shall be held or construed to exempt from taxation the real estate held or owned by any such bank or banking association; but the same shall be subject to State, county, municipal and other taxation to the same extent and rate and in the same manner as other real estate is taxed."

These two sections, considered together, received a construction by the Court of Appeals of the State

of New York previous to the consideration of the People against Weaver by this court.

In consideration and review of these statutes and the interpretation placed upon them by the Court of Appeals of the State of New York, it is said:

"It can not be disputed—it is not disputed here—nor is it deemed in the opinion of the State Court, that the effect of the State law is to permit a citizen of New York who has money capital invested otherwise than in bonds to deduct from that capital the sum of all his debts, leaving the remainder alone subject to taxation, while he whose money is invested in shares of bank stock can make no such deduction. Nor, inasmuch as nearly all the banks in that State and in all others are National Banks, can it be denied that the owner of such shares who owes debts is subject to a heavier tax on account of those shares than the owner of monyed capital otherwise invested, who also is in debt, because the latter can diminish the amount of his tax by the amount of his indebtedness while the former can not. That this works a discrimination against the National Bank shares as subjects of taxation unfavorable to the owners of said shares is also free from doubt."

It will be observed that the laws of New York enabled the citizen tax-payer to deduct any indebtedness which he had at the date of assessment from the value of all personal property except National Bank shares, thereby making a clear discrimination against capital thus invested. On the contrary, the tax law of Indiana permits no citizen to deduct his debts from any personal property. His money, his stocks, his goods, his horses, his cattle, his houses, his lands, his bank shares, both State and National, together with all other property, which he may possess at the time, are all subject to the same assessment valuation and rate of taxation. The citizen, by the law of Indiana, must list *all* for tax-

ation.

Revenue Laws of Ind., 47-48, 50 and 51.

It is true that there are certain limited credits, from which debts may be deducted, but shares of National bank stock will not be relieved from taxation because some other classes of property are exempt.

Cooley on Taxation, p. 395, and cases there cited. 19. Wall. 490.

In People vs. Weaver, the relator placed himself in a position to ask the relief sought. He appeared before the assessors, filed the required affidavit and demanded his rights under the law. Before any individual shareholder or the bank in his interest can demand the assistance of a court of equity he must first have filed his sworn schedule as required by statute Sec.— supra—. Then he should appear before the board of equalization and make his complaint if he has any and failing to do this either in person or by the bank who is representing his interests neither he, nor the bank have any standing in a court of equity.

The revenue law of Indiana is as follows: Sec. 149 & 150, p. 50. Revised laws of Ind. read as follows:

SEC. 149. The several County Auditors in this State shall, on or before the first day of April in each year, cause to be printed, at the expense of their respective counties, a sufficient number of blank lists, forms and instructions, required by this act, or by the Auditor of State, and shall deliver the same to the Assessor.

SEC. 150. The Board of County Commissioners, Auditor and Assessor shall meet at the seat of justice of each county on the first Monday or June, annually, and shall constitute a board of equalization, who shall have power to hear and determine the complaint of any owner of any real or personal property, moneys, rights, credits and effects, or poll listed, respecting the same, and the valuation of any such property or taxables, made subsequent to the preceding first day of April, and shall correct any list or valuation as they may deem proper, and shall have power to equalize the valuation made by the Assessor, either by adding to or deducting from their valuation such sums as to them, or a majority of them, shall appear just and equitable.

Tax Laws of Ind Sec 49 48 150

There is no allegation in the Bill, neither is there any evidence in the Record to show that any shareholder or any officer of the bank sought relief in any manner provided by statute. The rule upon this point is very clearly stated in

Williams vs. Weaver, 100 U. S. p. 547.

"We may observe, also, that the federal right mainly relied on here as having been violated, namely: the right to have the plaintiff's indebtedness deducted from the valuation of his bank shares, was not raised because he did not, as in the previous case, (referring to the People vs WEAVER), make the necessary affidavit and demand."

VII.

The question that lies at the foundation of this action is this:

The Bill and the evidence in this case establish the fact that of the 8000 shares of the capital stock of the Bank 1782 shares, are owned and held by non-residents.

It cannot be claimed that the non-resident shareholders are entitled to deduct their debts from the value of their shares. Yet, this complainant demands an injunction, restraining not only the collection of the tax imposed upon the shares of resident stockholders, but non-resident as well. It will scarcely be claimed that the non-resident shareholder can maintain this action. It follows, then, as a logical sequence, that the Bank which appears as their representative, does not possess rights superior to their own.

The most that is claimed as to a discrimination against shares of National bank stock is, that if the shareholder has debts and no credits from which this indebtedness can be taken, then he should be allowto deduct his indebtedness from the value of his bank shares. This, it is claimed, constitutes the

discrimination.

If then a resident shareholder has no debts; or, if he has credits other than bank shares from which he might deduct his debts, in either case he cannot be injured admitting the position assumed by complainant to be true.

The evidence in this case establishes the fact that four shareholders, Bayard, Mackey, and the two Prestons, were indebted, on the 1st day of April, '79 and that they had no credits from which this indebtedness could be deducted.

The aggregate value of their shares, amounted to $ 134,175. and the amount of their indebtedness to $ 56,500.

It does not appear that any other shareholders of the bank had any debts. The only complaint then that the bank can make, is as to these four.

Yet the bank insists that, the Revenue Laws of the State be declared void. This demand is wanting in the essential quality of justice.

Admitting the position of the complainant to be correct, no injury has been done, or, is about to be done, except to the four above mentioned.

Can it be possible that a bank, can come into a Court of Equity and obtain an injuction restraining the collection of all the tax assessed against it, and its stockholders, upon such a record as this case presents?

Austin vs The Aldermen, 7 Wallace 694.

National Bank vs Kimball 13 U. S. 732.

By any fair construction of the Revenue Laws of Indiana Bayard, Mackey and the Prestons owe a valid tax.

The testimony, Rec. page 16, shows that Bayard is the owner of three hundred and fifty shares of bank stock, valued at $105. per share

His indebtedness, by his own testimony, is $15,000, leaving a balance of $21,850 for taxation, which at 1.22 per $100 amounts to $366.57. And

so it is with the other three, showing that there remains a balance on taxes, on the shares of these four share-holders, after deducting all debts, of $947.65.

This tax, nor any part of it, has been paid or tendered, in fact, no tax has been paid or tendered by the bank or any individual share-holder thereof, on the shares of such bank for the year 1879.

An injunction can not be granted the bank or the share-holders to restrain the collection of illegal tax until the legal tax be fully paid or tendered.

"He who would have equity must first do equity."

High on injunctions, Sec. 497 page 329.

National Bank vs. Kimball 103, U. S. 732.

State Railroad Tax cases, 92 U. S. 575.

Dows vs. Chicago, 11 Wallace 108.

Hennewinkle vs. Georgetown, 15 Wallace 548.

High on Injunction, 2d edition, Sec. 486, and cases cited in Note 3.

Chicago vs. Frary, 22 Ills. 34.

VIII.

The case made by the supplimental bill, that the Treasurer, T. P. Britton, has advertised the Real Estate of the complainant and is threatening to sell the same for the taxes due on the shares, we will now consider:

It is proper for counsel to say that the action of the Treasurer in advertising the real estate of the bank for taxes due on the shares was on his own motion, such officer believing he would be liable upon his official bond should he fail to do so.

We know of no law of Indiana for such a course. A sale therefore, wholly without authority of law, would be a nulity and such officer a trespasser.

This being true no injunction can be granted be-

cause there is no color of authority for such a proceeding.

Cooley, on Taxation, 542.

State Tax Railroad cases, 92, U. S. 575.

WE SUMMIT:

1. That the shares of National Bank stock are required to be assessed at their *fair cash value*, and that the law does not require the value of the real and tangible personal property to be added thereto and the same was not added in the case at bar.

2. That the shares of stock were by the Assessor and the Board of Equalization assessed for taxation to the owners of the shares, but were placed upon the tax duplicate by the Auditor under the name of The Evansville National Bank, separated and classified into real and personal property, the aggregate amount showing the value of all the shares; that the *tax duplicate* is not the assessment, but a mere memorandum, and the entry in the form set out was in conformity with the statute, but without any intention on the part of the law-making power to charge the same to the Bank and relieve the shareholder, but with the intention that the Bank should withhold dividends until the tax of the shareholder was paid, and possibly with the intention that the Bank should pay the tax for the shareholder. Certainly no informality or irregularity in the form of entry in the tax duplicate should destroy any tax properly and legally assessed; that if there is any *doubt* about the construction of the law, that construction will be given which will reconcile the laws of the State with the Act of Congress.

3. That if complainant is correct in its assumption that the State law makes no provision for the deduction of real or tangible property from the value of shares, still, it has no standing in a court of equity of the United States, for it concedes that in the case before the court no injury is done or

threatened to complainant by reason thereof, the shares being assessed at less than their fair cash value. The shares and real estate added together *as assessed*, amount to less than the *actual value* of the shares as shown by the evidence.

4. That the claim of the Complainant that there is a discrimination against the shareholders because they are not allowed to deduct their individual indebtedness from the value of the shares is not well taken, because the citizens and the associations under the State law can only deduct certain limited debts from certain *limited credits*, while in ascertaining the value of shares of Natoinal banks, the entire indebtedness of the bank is taken out not only from credits, but from the value of all the assets, including real and tangible property. The discrimination is against the citizen and State associations.

5. That the Act of Congress *expressly* authorizes the State to tax the shares of National Banks, and that United States bonds and legal tender notes held by the banks can not be deducted in ascertaining the value of the shares; that while the citizen and State corporations can not be taxed upon such bonds and legal tenders, this does not make a discrimination forbidden by the Act of Congress.

6. That the deduction on account of debts allowed the citizen and State corporations is in the nature of an exemption to avoid double taxation; that "it could not have been the intention of Congress to exempt Bank shares from taxation because *some moneyed* capital was exempt."

7. That when the bill merely shows as in this case that an inconsiderable number (4 out of 85 shareholders) happen to be owing debts and having no credits from which their indebtedness can be deducted, it does not make a case that requires a court of equity to declare the law illegal and void and the entire tax uncollectable.

And these four, according to the Record, having

failed to file their schedules, or to complain to the the Board of Equalization, as required by law, or to make any demand whatever to have their indebtedness deducted from the value of their shares, are too late to demand equitable relief.

And, further, no relief can be granted these shareholders, nor to the complainant in their behalf, because they are justly chargable with a legal and valid tax on their shares and have neither paid nor tendered any part thereof.

8. No injunction can be granted in this case, on the supplimental bill, because the Treasurer is threatening to sell the Real Estate of the bank for the taxes due from the shareholders on their shares, because such act would be without authority, the Officer a Trespasser and the sale void.

No equitable relief can be granted in such case, the remedy being at law.

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